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Locating the place of consent in the movement of Nigerian women for prostitution in Italy

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LOCATING THE PLACE OF CONSENT IN THE MOVEMENT OF NIGERIAN WOMEN FOR PROSTITUTION IN ITALY

By

Olufunke Florentina Aluko-Daniels

September 2014



**The work contained within this document has been submitted
by the student in partial fulfilment of the requirement of their course and award**

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OF NIGERIAN WOMEN FOR PROSTITUTION IN ITALY**

by

OLUFUNKE FLORENTINA ALUKO-DANIELS

***A thesis submitted in partial fulfilment of the University's
requirements for the Degree of***

DOCTOR OF PHILOSOPHY

**Department of International Relations and Social Science
Faculty of Business, Environment and Society
Coventry University**

September 2014

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Abstract

The history of international human trafficking law suggests that the trafficking of women for prostitution is not a new phenomenon. The earliest approach to address the problem was founded on a moral ground but adopted a law enforcement strategy by criminalising the procurement of women for prostitution. Consequently consent at the time was discountenanced in favour of the end purpose for which the women were moved. This approach prevailed over a long period until the adoption of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (Trafficking Protocol) in 2000.

The Trafficking Protocol adopts a three thronged (prevention, protection and prosecution) approach to combating human trafficking. Whilst this is a novel approach the Trafficking Protocol makes consent irrelevant only when the movement of the women is procured through coercion. Accordingly consent or lack of consent became an essential element for distinguishing trafficking from other migratory crimes such as human smuggling. The challenge of applying consent as criterion to differentiate human trafficking from human smuggling particularly becomes problematical when applied to the movement of women for prostitution. This is especially so in the light of feminists' debate on whether prostitution should be conceptualised as sex work or as violence against women.

To establish consent or lack of consent in the context of the Trafficking Protocol is complicated, inexhaustive framing of the consent nullifying elements ignores country specific and cultural practices in recruitment of women for prostitution. This thesis demonstrates the complexity of using consent as a criterion to determine whether Nigerian women moved into Italy are trafficked or voluntary agents. In doing so the thesis highlights the extent to which the interpretation of consent may be influenced by social, cultural and socio-legal issues. This thesis accentuate *juju* oath ritual and debt bondage as frequently employed to recruit and move Nigerian women into prostitution as consent nullifying elements.

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Declaration

I declare that this thesis is my own work and has not been submitted for another academic award at another university.

List of Abbreviations

CATW	Coalition Against Trafficking in Women
CEDAW	the Convention on the Elimination of All Forms of Discrimination Against Women
CYPF	Child and Youth Protection Foundation
ECtHR	European Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic and Social Rights
ICMHD	International Centre for Migration and Health Development
ICTY	Statutes of the International Criminal Tribunal for the Former Yugoslavia
ICTR	International Criminal Tribunal for Rwanda
ILO	International Labour Organization
IOM	International Organization for Migration
HRW	Human Rights Watch
NHRC	National Human Rights Commission
NAPTIP	The National Agency for the Prohibition of Traffic in Persons and Other related Matters
NHRC	National Human Rights Commission
NGO	Non-Governmental Organisation
OHCHR	Office of the United Nations High Commissioner for Human Rights
Smuggling Protocol	Protocol against the Smuggling of Migrants by Land, Sea and Air,
Trafficking Protocol	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children
UNTOC	United Nations Convention Against Transnational Organized Crime

UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNICRI	United Nations Interregional Centre Justice and Research Institute
WOTCLEF	Women Trafficking and Child Labour Eradication Foundation

List of Statutes

State Legislation

Australian Criminal Code Act 1995

Code of Criminal Procedure of Italy 1998

Criminal Code of Georgia [Georgia], 2287-rs, 15 February 2000

English Sexual Offences Act 2003

Merlin Law (L. 75/1958)

Trafficking in Person (Prohibition) Law Enforcement and Administration Act, 2003, as amended in 2005

Regional Treaties

Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report (2005) opened for signature 16/05/2005 entered into force 01/02/2008, CETS 197

Convention for the Protection of Human Rights and Fundamental Freedoms, *entered into force* Sept. 3, 1953, *as amended by* Protocols Nos 3, 5, 8, and 11 *which entered into force* on 21 September 1970, 20 December 1971, 1 January 1990, and 1 November 1998 *respectively*, 213 U.N.T.S. 222,

Inter-American Convention on International Traffic in Minors, (adopted March 18 1994 entered into force August 15 1997, reprinted in (1994) 33 ILM 721) OAS Doc.OF.A/Ser.K/XXI.5.79, OASTS

International Treaties

Abolition of Forced Labour Convention 1957, (ILO No.105) adopted 25 June 1957, entered into force 17 January 1959, 320 U.N.T.S 291

Convention on the Elimination of All forms of Discrimination against Women 1980, adopted 18 December 1979, entered into force 3 September 1981, 1249 U.N.T.S 13; 19 ILM 33 (1980)

Convention to Suppress the Slave Trade and Slavery 1926, adopted 25 September 1926, entered into force 9 March 1927, 60 L.N.T.S 253,

Convention for the Suppression of the Traffic in Persons and of the Exploitation of Prostitution of Others 1949, adopted 2 December 1949, entered into force 25 July 1951, 96 U.N.T.S 271,

Convention against Transnational Organized Crime 2000, adopted 15 November 2000, entered into force 29 September 2003, 40 ILM 335 (2001)

Forced Labour Convention, 1930 (No. 29), Convention concerning Forced or Compulsory Labour, adopted 28 June 1930, entered into force 1 May 1932, 39 U.N.T.S 55

International Agreement for the Suppression of the "White Slave Traffic," adopted 18 May 1904, 35 Stat. 1979, entered into force 18 July 1905, 1 L.N.T.S. 83,

International Convention for the Suppression of the White Slave Traffic, adopted 4 May 1910, entered into force August 8, 1912, 3 L.N.T.S 278

International Convention for the Suppression of Traffic in Women and Children, adopted 30 September 1921, entered into force June 15 1922, 9 L.N.T.S 415,

International Convention for the Suppression of the Traffic in Women of Full Age, adopted 11 October 1933, entered into force August 24, 1934, 150 L.N.T.S 431

International Covenant on Civil and Political Rights 1966, adopted 16 December 1966, entered into force 23 March 1976, 999 U.N.T.S 171 and 1057 U.N.T.S 407/[1980] ATS 23/6 ILM 368 (1967)

International Covenant on Economic and Social Rights 1966, 16 December 1966, entered into force 3 January 1976, 993 U.N.T.S 3 [1976] ATS 5/6 ILM 360 (1967)

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime, 15 November 2000, 40 ILM 335 (2001) UN.A/55/383 (Annex II, p.53)/[2005]ATS 27, entered into force 25 December 2003

Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organised Crime, adopted 15 December 2000, entered into force 28 January 2004, 40 ILM 384(2001)/UN Doc A55/383 (Annex III, p.62)/[2004] ATS 11

Rome Statute of the International Criminal Court (last amended January 2002), adopted 17 July, A/CONF. 183/9; 37 ILM 1002 (1998); 2187 U.N.T.S 90, entered into force 1 July 2002 1998

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institution and Practises similar to Slavery (Supplementary Slavery Convention) Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community 1956

Universal Declaration of Human Rights 1948, GA res. 217A (III), UN Doc A/810 at 71 (1948)

Soft Law

International Labour Conference (87th Session) Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Geneva, 17 June 1999)

Recommended Principles and Guidelines on Human Rights and Human Trafficking (Trafficking Principles and Guidelines), E/2002/68/Add.1 (2002)

Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities [2004] OJ L 261

European Union Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings (EU Plan on Best Practices)

Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children (Ouagadougou Action Plan)

ECOWAS Initial Plan of Action against Trafficking in Persons (2002-2003)
ECOWAS Initial Plan of Action

United Nations Commission on Human Rights, *Contemporary Forms of Slavery*, 27 April 1999, E/CN.4/RES/1999/46

List of Cases

International Tribunals

The Prosecutor v Dragoljub Kunarac, Radomir Kovac, and Zoran Vukovic (Appeal Judgment) Case Nos. IT-96-23 & IT-96-23/1-A 12 June 2002, 542

The Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, Judgment (2 September 1998)

The Prosecutor v. Kunarac et al (Trial Chamber I) Case No. IT-96-23-T& IT-96-23/1-T (22 February 2001) (Judgement)

European Court of Human Rights

Rantsev v. Cyprus and Russia (25965/04) [2009] ECHR 22 (7 January 2010)

Soering v United Kingdom (app no. 14038/88) [1989] 11 EHRR 439

Siliadin v. France (73316/01) [2005] ECHR 545 (26 July 2005)

English Courts

Curragh Investments Ltd v Cook [1974] 1 WLR 1559, 1563

R v. Massey [2007] EWCA Crim 2664

Nigerian Courts

Attorney General of the Federation v. Helen Igdaño (unreported)

Attorney General of the Federation v. Monday Aikhomu (unreported)

Attorney General of the Federation v. Ese Osagie (unreported)

State v. Okezi [1972] 2 ECSLR 419

Australian High Court

R v Tang [2008] HCA 39 (28 August 2008) 142

Introduction

1.1 Introduction

The cliché that is often used to refer to prostitution is that it is the 'oldest profession' (Lerner, 1986; Wilkinson, 2003; Munro & Giusta, 2008). Whilst the origin or the legitimacy of this claim is contestable, Lerner (1986) and Munro & Giusta have suggested that the accuracy of such a claim is far from clear except that such saying is supported by the prolonged existence of prostitution as one of the oldest institutions created and sustained by patriarchy. Accordingly Munro & Giusta state that 'since patriarchy is the oldest form of social organisations, it is no accident that prostitution has been so resilient but this, it is submitted, tells us nothing about its future in a world of genuine equality and empowerment for women' (2008:1). Conceivably, the idea of prostitution as a possible path for women's empowerment affirms the 'futility of efforts designed at its eradication in the modern world' (Munro & Giusta, 2008:1).

Similarly Lerner (1986:124,125) traced the exploitation of women in prostitution to "cultic sexual service" in the antediluvian times especially in ancient Mesopotamia where women were used to offer sexual services as part of temple worship and fertility rituals. Lerner (1986:133) links the prostitution of women with women's subjugation: "It is likely that commercial prostitution derived directly from the enslavement of women and the consolidation and formation of classes. Military conquest led, in the third millennium B.C., to the enslavement and sexual abuse of captive women. As slavery became an established institution, slave-owners rented out their female slaves as prostitutes, and some masters set up commercial brothels staffed by slaves". Lerner's account suggests that in ancient times the practice of having prostitutes and concubines developed into a status symbol practised by men of means. It is therefore not out of place to state that the prostitution of women is not a new phenomenon. Affirming the role of patriarchy in the prostitution of women, Pateman (1988:2) argues that in patriarchy, men, through marital and informal

contract, have unhindered access to women's bodies.

Accordingly the trafficking of women for prostitution is not a new phenomenon (Doezema, 2001; Limoncelli, 2010, Chuang, 2010) except that it has assumed a new dimension in contemporary times. As part of the emerging elements of the trafficking of women for prostitution, new and sophisticated perpetrators are emerging using equally refined methods to recruit and move women into prostitution in a way that puts them one step ahead of counter trafficking initiatives. Thus this thesis contends that a realistic attempt to address the trafficking of women for prostitution necessarily requires a critical examination of the legal framework. It is in that respect that the thesis focuses on the requirement of consent as the key criterion for determining the occurrence of trafficking. The place of consent in the transnational movement of women for prostitution becomes germane in the light of arguments that prostitution can be a pathway for women's empowerment. Whilst feminists are generally concerned about women's empowerment, they differ as to whether prostitution holds the answer to the problem. Consequently whereas feminists condemn the exploitation of women in prostitution; they differ as to the best approach to tackle the problem. The difference in feminist approaches to trafficking for prostitution is not unconnected with the different feminists' perspectives on prostitution. Although, there are different feminists' positions on prostitution, it is the radical and liberal feminists' perspectives that have dominated the discourse on women's involvement in prostitution and the trafficking of women for prostitution (Kempadoo, 1996; Munro & Giusta, 2008; Limoncelli, 2009; 2010; Doezeema, 2010, Chuang, 2010). Consequently it is the positions of the two dominant feminists groups on prostitution as summed up by Kempadoo (1996:69) "one is to locate it in an analysis of the capitalist political economy, stressing the notions of the commodification of the body and migration into the sex trade due to processes of underdevelopment, displacement and dispossession... A second approach, most common among the radical feminists situates prostitution as the ultimate expression of patriarchy", that is adopted in this thesis.

The point of disagreement between the two dominant groups is whether prostitution

should be conceptualised from the perspectives of a business transaction and thus a way of economically empowering the women in it, thereby making it a private concern; or as violence against women thus making it a crime that violates the human rights of women involved and consequently a matter of public concern. If prostitution is viewed as a commercial transaction, the women involved in it are seen as exercising their agentic rights to pursue a legitimate business, contractual interest. Accordingly the liberal feminists notably Nussbaum (1999), Doezenia (2001, 2010) and Kempadoo (1996, 2001, 2005, 2007) argue for the recognition of prostitution as sex work. But if prostitution is viewed as a form of violence against women, it becomes a crime from which women need to be protected. The radical feminists unlike the liberal feminists view prostitution as a form of violence against women where the women are perceived as victims needing protection, consequently they advocate for the elimination of prostitution as a form of human rights violation (MacKinnon, 2011; Jeffreys, 1997, 2008).

The radical feminists blame the systematic subordination of women through prostitution on patriarchy which they suggest is responsible for the structural inequality in the society that works to benefit men (Dworkin, 1988; Pateman, 1988; MacKinnon, 1998; Jeffreys, 1997). Dworkin (1988:226) for instance, conceive prostitution as the sale of women's sexuality for men's pleasure. Dworkin therefore blames the existence of prostitution on gender inequality which she views as a direct consequence of patriarchy because men play a dominant role in the society. The radical feminists locate the main sites of patriarchal oppression to include the State, women's sexuality and violence against women amongst other practices (MacKinnon, 2011; Pateman, 1988). Accordingly Mackinnon (1990) states that in an unequal society, what the woman is left with is to sell her body through prostitution. Kelly (2007) also posits that the gendered nature of prostitution shifts the balance of power in favour of the person who exercises power over another's body and in most cases; it is the men who exercise such power. The location of the balance of power as between the women in prostitution and the men who buy sexual services from them raises fundamental issues on the place of consent. Accordingly, Kelly (2007) argues that to maintain the *status quo* is to retain the unequal balance of power in

commercial sexual transactions where exploitation and violence is rife, which undermines women's sexual autonomy. Hence, the radical feminists claim that legalising prostitution does not only amount to a violation of the women's sexual autonomy but it is also tantamount to legalising the harm suffered by the women in prostitution. To strengthen that position, some scholars have through their varied research highlighted the consequences of prostitution on the women involved in it (Farley, 2004; Zimmerman *et al*, 2006). In addition to the foregoing, whilst scholars like Shelly (2003) posits that prostitution threatens the well-being of the State citing the link between organised prostitution and organised criminal groups, to others like Farr (2004), Monzini (2005) and Raymond (2004), the legalisation of prostitution has the tendency to fuel the trafficking of women for prostitution.

But the liberal feminists fault the radical feminists' position for failing to recognise any distinction between forced prostitution and voluntary prostitution. Arguing in favour of voluntary prostitution and its recognition as a form of work, sex work the liberal feminists posit that women in expression of their autonomy should be free to make a career choice in prostitution. They therefore advance the position that such choice should be accorded the same recognition like any other form of work (Doezema, 1998, 2000; Agustin, 2003). The liberal feminists therefore view voluntary prostitution from a contractarian perspective for which a woman as a free agent may exercise her autonomy to participate. The liberal feminists consider the choice made by women to be involved in prostitution as equal to the choice made by people to become doctors or lawyers and argue that women should also be able to make a valid choice for prostitution as a career. In that sense, the liberal feminists conceive that the individual rights of women to work as prostitutes should supersede the public interest to eliminate prostitution.

Consequently the liberal feminists' position promotes individual interest of women who desire to work as prostitute. Closely tied to the idea of individualism are concepts such as 'agency', 'autonomy' and 'choice' which are often cited to advance women's right to self-determination to make a choice in prostitution. Kempadoo (2001) for instance in her 'sex work' approach to prostitution postulates that prostitution rather

than being an oppressive institution to the women involved in it, serve to liberate them from oppression by empowering them. Kempado (2001:41) therefore argues that the different problems as frequently highlighted in prostitution obscure the agency of sex workers. Nussbaum (1999) also disagrees that prostitution objectifies women and argues that though prostitution may be considered to be morally wrong it is acceptable where it is carried out in a relationship of mutual respect. To think of prostitution as a commercial transaction that involves 'mutual respect' between the women and their male client is to ignore the reality of the harmful experiences of the women affected. Also O'Connell Davidson (2005:3) was critical of the anti-prostitution movement because according to her the radical feminists' position "ignore the diverse and complex realities of those who are prostituted and deny their autonomy and agency." Otto's (2007:6-12) idea of women's agency in prostitution is predicated on the notion that women in prostitution demonstrate their rational choice to sell their sexuality for survival in what she referred to as 'survival sex'. It is difficult to conceive how 'survival sex' can be an expression of rational choice and agency because 'survival sex' depicts the women moved into prostitution as women who had no other viable alternative for them. Accordingly this thesis contends that O'Connell Davidson and Otto's postulations amount to an abuse of the concept of agency by stretching it to a ludicrous extent to legitimise the suppression of women. Thus this thesis demonstrates that the concepts of agency, autonomy, rational choice as well as consent are relative concepts that may derail the women's 'genuine choice'.

The radical feminists in criticising the liberal feminists' position argue that the liberal feminists' position neglects to problematise the word, "work" because according to Dworkin (1988) Jeffreys (1997; 2008) most women in prostitution or moved into prostitution are women of lower status. According to Jeffreys (2008) the new wave of industrialisation of prostitution implicates the States that have legalised prostitution as pimps. Another problematic issue with prostitution as work is the idea of prostitution as a legal contract and according to Pateman (1988) the liberal ideology upon which prostitution as work is based requires the equality and freedom of parties to such a contract. Equality and freedom of the parties to a migration for prostitution pact therefore underscores the inquiry into the role of consent in such agreement.

The application of the concepts of individualism and freedom of contract to the notion of women's economic empowerment through prostitution is what Pateman (1999) referred to as 'modern patriarchy' and Jeffreys (2009) refers to it as a neo-liberal economic language formulated to tolerate the harm of prostitution. Modern patriarchy, according to Pateman (1999) seeks to make women available at all levels of the market for any man who can afford one through prostitution. Modern patriarchy therefore likened prostitution to other forms of capitalist enterprise which is understood as a private business where the contract between the client and prostitute is perceived as a private arrangement.

Whilst a detailed discussion of prostitution is beyond the scope of this thesis the analysis of the intersections between prostitution and feminists' debate on the right of women to self-determination to make a career choice in prostitution is needful to effectively answer the research question. This is because the debate as represented by feminists now and again tends to conflate trafficking for prostitution with voluntary prostitution. Thus feminists' debate has tended to create two categories of women in prostitution; the coerced and the volunteers. Whilst feminists' debate on prostitution has enriched existing scholarship on trafficking for prostitution and the different initiatives to address the problem, the ideological differences within the group as to whether prostitution is sex work or violence against women tends to remove attention from other equally relevant issues such as the obligation of States to properly identify and provide the needed support for women trafficked into prostitution.

Nigeria for instance treats prostitution as inextricably linked with trafficking for prostitution hence Nigeria adopts an anti-trafficking legislation that could also pass for an anti-prostitution law with most of its provisions linked to prostitution. But addressing the transnational movement of women for prostitution transcends individual State's approach to the problem as the policy of an individual State may be inadequate to deal with the criminality of the problem. This is particularly so when women are moved from one jurisdiction where prostitution is criminalised to another where prostitution is permissible or partially criminalised. The complexity that arises from such situation is intensified when the voluntariness of such a movement is

questioned in ignorance of the context under which the women are recruited, moved and made to work as prostitutes.

The complexity of the phenomenon of trafficking for prostitution as currently operated accentuates the necessity of States' cooperation. This thesis contends that the divergent State practice on prostitution complicates effective State cooperation to address the problem. Yet to effectively respond to the precariousness of the situation that women moved into prostitution find themselves, the need for State cooperation cannot be overemphasised. In a closing remark delivered at an COE-OSCE Conference on human trafficking, Hofburg, Vienna, Austria in February 2014, the United Nations Special Rapporteur on human trafficking, Joy Ezeilo accentuates the need for State cooperation as one of the strategies that is needed to tackle the problem of trafficking. The other challenge that arises from the lack of uniform practice on prostitution is that fundamental issues such as victim protection and the prosecution of perpetrators may be compromised.

The practicality of addressing the criminality associated with the transnational movement of women for prostitution may also be undermined by the different feminists' positions on prostitution and by extension, trafficking for prostitution. Thus according to Munro & Giusta (2008:4) the issues are 'whether to respond to the individual experience of involvement in prostitution or the structural significance of men's commodification and consumption of female sexuality.' The authors therefore argue that the link between migration and prostitution complicates the proper identification of victims of trafficking as distinct from other women migrant sex workers.

1.2 Research Question

This research is built around how practitioners in the field of human trafficking make sense of consent in the movement of Nigerian women for prostitution in Italy. Thus this thesis seeks to 'Locate the Place of Consent in the Movement of Nigerian Women for prostitution in Italy'.

Aim

How do practitioners in the field of human trafficking make sense of consent in the movement of Nigerian women for prostitution in Italy?

The intended objectives are:

- To undertake a baseline mapping of consent under international human trafficking law.
- To problematise the transnational movement of women for prostitution as a form of labour migration.
- To contextualise consent in the movement of Nigeria women for prostitution in Italy.
- To critically examine the possible effect of physical and psychological sufferings on the willingness of Nigerian women to migrate and work as prostitutes in Italy.
- To establish if there is any correlation between the *juju* oath ritual and the voluntariness of Nigerian women to migrate to work as prostitutes.

1.3 Relevance

Whilst there have been different international efforts to address the phenomenon of trafficking for prostitution, it is the current international legal framework that has been a source of heated debate within the feminist arena (Doezema, 2010; Limoncelli, 2010; Gallagher, 2010). The most contested issue in the current legal framework on trafficking is the role of consent in the movement of women for prostitution. As chapter three demonstrates, consent in the previous international legal framework especially during 1904 – 1949 regime was not an essential criterion to determine whether trafficking has occurred rather the ‘immoral purpose’ for which the women are moved is considered an essential element. Under the current dispensation the definition of trafficking makes consent irrelevant only when women are coercively recruited. In contemporary times therefore lack of consent has become a necessary

ingredient of the offence of trafficking and accordingly used as a standard to distinguish between trafficking and human smuggling. Without necessarily going into the complexity of consent at this point this thesis considers it a misnomer that a trafficked person can be seen as consenting to being trafficked. But as chapter two suggests consent is a complicated concept, the interpretation and validity of which depends on a variety of factors. Although the current anti-trafficking framework provides the conditions under which consent may be vitiated, the imprecise language of the law further complicates the requirement of consent. Inspired by feminists' debates on prostitution and sex work, this thesis offers an insight into the challenges posed by the ideological divide in the feminist's standpoint on prostitution and sex work, highlighting the effect of such differences on Nigerian women who may have been coercively moved into Italy for prostitution.

With particular focus on the trafficking of Nigerian women into Italy for prostitution, whereas most previous works on Nigerian women moved into Italy for prostitution, like the study conducted by UNICRI in Nigeria and Italy in 2004 and Carling's (2006) amongst others, tend to adopt women from Edo state moved into prostitution in Italy as representative of Nigerian women trafficked for prostitution, this research works on the assumption that the movement of women from Nigeria for prostitution is not limited to women from Edo state. As findings in chapter four of this thesis suggests focusing on Edo women alone risks representing Nigerian women moved into Italy for prostitution as willing agents. This thesis therefore postulates that with respect to the issue of consent, the continued use of Edo women as representative of Nigerian women trafficked into prostitution is misleading. However the key focus of this research is locating the genuineness of consent given by Nigerian women (Edo women inclusive) moved into prostitution. Whilst this thesis does not doubt that there may be Nigerian women who willingly migrated to Italy to work as prostitutes it questions the role and effect of the *juju* oath ritual (black magic or voodoo practice that involves the invocation or worship of spirits as part of the traditional religion) and debt bondage vis-à-vis consent of the women moved into prostitution under such practices.

Different countries of the world commonly criminalise, legalise or take a middle course, partial regulation to address the issue of prostitution. And sometimes individual country's approach to prostitution tends to generally define the response to the problem of trafficking for prostitution. Whilst such approach may not ordinarily be a cause for concern with respect to in-country trafficking flows, with respect to the transnational movement of women for prostitution the difficulty that arises with such method is how to properly identify a trafficked person as distinct from a voluntary migrant. The transnationality and criminality associated with such movement makes it an activity that transcends the territorial jurisdictions of one State thus complicating the issue of State obligation to protect as well as prosecuting perpetrators. Whilst this research admits of the necessity to deal with the criminality associated with both trafficking and smuggling, it advances the position that criminalisation of both activities should not be done at the detriment of protecting actual victims of trafficking.

Accordingly, for Nigerian women moved into prostitution to be identified as victims of trafficking the women must have been coercively recruited to work as prostitutes in Italy. Accordingly the need to effectively determine how to classify whether Nigerian women moved into Italy for prostitution are coerced or willing migrants, the research adopts an intersectional feminist framework to analyse the surrounding circumstances from which the women are recruited and the conditions under which the women work as prostitutes in Italy. This thesis draws and builds on existing literature on trafficking for prostitution and feminist scholarship as compared with data from Nigeria and Italy. It is expected that this thesis will contribute to knowledge by exposing the fluidity of consent as a key standard for determining what constitutes trafficking. The thesis also exposes the challenge of generalising feminists' debate to represent all women in prostitution, this is because as exemplified in the conceptual framework, feminists' debate on prostitution and trafficking for prostitution is grounded on the assumption that consent can be used to compartmentalise women in prostitution as either sex workers or trafficked victims.

1.4 Research Design

Preparatory activities preceding the fieldwork started on 23rd May 2011 immediately after obtaining ethical approval for the research methodology in April 2011. The fieldwork was conducted in Nigeria and Italy. The researcher was in Nigeria for 7 weeks between June and July 2011 and in Italy for 3 weeks in September 2011. Key methodological issues concern the identity of the target participants; whether the participants would include women moved for prostitution or whether participants would be restricted to experts, practitioners and caregivers working in the field?

To avoid over-generalisation, the scope of this research was limited to Nigeria and Italy, two countries historically and closely linked by the movement of women for prostitution, yet which have different approaches in dealing with the problem. With respect to the choice of methods, the researcher adopted a qualitative research methodology and a feminist theoretical framework in conjunction with Crenshaw's (1989; 1991) concept of intersectionality. The rationale for the choice of methodology is explained below. A discussion of the theoretical framework can be found in the following section.

With respect to target participants, scholars such as Shaver (2005) and Laczko (2005) suggest that data obtained directly from trafficked women produce first-hand information on a woman's state of mind at the time of recruitment, as well as first-hand information on the conditions of work at the destination country. Accordingly, women who are in the process of being moved, who are working as prostitutes or who may have been rescued or escaped from exploitative situations offer such first-hand information. However, there is the serious risk of making such women more vulnerable to harm, exposing their friends and family to harm or to reprisal attacks from the exploiters. Thus, according to the World Health Organisation (2003) recruiting women in any of those conditions raises fundamental ethical issues both for the researcher and the researched persons.

An initial risk assessment assessed the potential risk associated with recruiting Nigerian women moved into prostitution. Firstly, identifying Nigerian women who have been moved into prostitution and are under the control of their recruiter is problematic

because of the clandestine nature of the recruitment and movement processes as well as the hidden nature of prostitution which makes it a high risk activity both to the researcher and the research subject. Even states struggle with issues of identification, hence the label of individuals moved into prostitution as a 'hidden population' (Shaver, 2005; Tyldum & Brunvoski, 2005). Secondly, the identification of women moved into prostitution becomes even more problematic when it involves Nigerian women who may have been recruited under the influence of the *juju* oath which, as examined later in the thesis, is claimed to have some psychological effect that is capable of constraining the women from talking about their experiences or revealing the identity of their recruiters. Thirdly, individual states, including Nigeria and Italy, as well as inter-governmental organisations define prostitution differently; sometimes such definitions conflate voluntary and forced prostitution, this further obscures proper identification of victims.

A less risky alternative would have been to recruit women who have left the trade, or who have been rescued and are in a shelter, but using data generated from this source is also potentially suspect. A risk assessment of this method suggests that there is the potential risk of bias that may affect the reliability of the information as there is the likelihood of such information being tainted due to the different expectations the women under the protection of the state or an NGO. Shaver (2005), in particular, argues that data from protected sources is one sided because it only presents the issue from the perspective of women who have come to the attention of the authorities or welfare practitioners. Further, it is possible for an individual moved into prostitution to be both a victim and a criminal suspect, contaminating the reliability of the any evidence and data obtained. However, most saliently, Meaux & Bell (2001) emphasises the need to recognise and respond to the vulnerabilities of women in shelter whilst they are participating in the research. To appropriately respond to such vulnerabilities require specialist skills in psychology and or psychiatric skills, skills which this researcher does not have. The WHO (2003) caution that interviews should be undertaken in such a way as not to expose the interviewees to harms such as stigmatisation or the recall of past experiences that may further traumatise the women.

Ultimately, it is doubtful whether women who may have been victimised and exploited would want to share these intimate and personal experiences with a stranger for purposes which they may not fully comprehend, regardless of participation sheets and informed consent. Thus, to recruit women in shelters for research purposes in order to obtain reliable evidence and data would require a lengthy period of trust-building not available to the researcher owing to the constraints of the doctoral timetable.

An alternative methodological strategy employed by researchers in this area in the face of these practical and ethical constraints is to obtain information from those individual experts and practitioners who work with women moved into prostitution. A key issue at the design stage is the design of a research project that will generate accurate and reliable data. Accordingly the alternative to recruiting women moved into prostitution as target participants is the recruitment of gatekeepers and or key officers of primary human trafficking organisations and institutions such as the UNODC, NAPTIP, IOM, UNICRI offices in Nigeria and Italy.

However, some of the same problems identified above remain and there remain major challenges and frustrations in gathering evidence and data from these indirect sources. In Nigeria, for example, bureaucracy and hierarchal issues obstruct access to practitioners and the institutions and the organisations for which they work. Inordinate and convoluted means and methods are required to obtain interviews. Workers in State and non-state organisations are unwilling or unable to grant interviews or supply data or documentation without explicit permission from their superior with this trail of authorization often leading to the most senior figure in the organisation. A specific example of these barriers involves the time and effort taken to access one particular State-funded shelter. Numerous bona fides, including membership of the Nigerian Bar Association, were not judged adequate by employees to acquiesce to an interview. Only after applying to the Bar Association for a letter of introduction did the Executive Secretary make contact and then only to redirect the request to the PR office within the organisation. Persistence eventually resulted in an interview with an employee of the organisation, but further requests for

copies of documents or to visit a shelter were again declined for reasons of bureaucracy.

Further complications include a lack of precise and current knowledge within organisations. For example, at the social welfare unit of the Federal Ministry of Women Affairs, not only were they unable to provide any relevant information, but there was confusion as to the identity, or indeed continued existence of, the desk officer for human trafficking. Data and documentation was often also very dated. A lengthy search for current material at the federal secretariat complex in Abuja was rewarded by a solitary country report to the CEDAW Committee dating back to 2008. A further challenge was the growing insecurity in Nigeria during the period of research. For example, an attempt to meet with police officers working in the area of human trafficking was refused in the wake of a terrorist attack on the Police Headquarters in Abuja.

1.5 Methodology

Feminist framework is an essential part of the methodology because human trafficking is internationally identified as a crime that disproportionately affects women (ILO, 2012; UNODC, 2009). Hesse-Biber (2007) identifies the fundamentals of feminist research as research that problematises diverse issues confronting women, gendered institutions, or action frameworks in order to realise social justice for women in such a way that adds to knowledge on the oppressive situations that affect women.

In the context of the scope of the problem as it affects women moved from Nigeria, existing literature on the subject suggest that the prevalence of trafficking for prostitution is commonly linked with women who are frequently moved from Nigeria into Italy for prostitution (UNICRI, 2004; 2010; USDOS, 2010, 2012; Okojie, 2009; Akor, 2011; Aghatise; 2004). Whilst the voluntariness, or otherwise, of the movement of Nigerian women into Italy for prostitution is often not inquired into, these works identify women who are confronted with economic, social and cultural issues as most vulnerable to being trafficked for prostitution. Consequently this thesis contends that these factors often lead to multiple discriminations that can be used to question the

voluntariness of Nigerian women to migrate to Italy as prostitutes. This research therefore adopts Crenshaw's (1991) intersectionality, as also approved by Makkonen's (2002:10) analysis of intersectional discrimination to conceptualise how economic, social and cultural factors interact to facilitate the voluntary or forced migration of Nigerian women for prostitution on the one hand and how race, nationality and immigration status of Nigerian women in Italy interact to promote or derogate from the free choice of the women to work as prostitutes in Italy on the other hand.

However, one contested issue with intersectionality as a research framework as identified by Hancock (2007) is with respect to the methods that can effectively capture all the tenets of intersectionality theory thus according to Davies (2008) intersectionality lacks clearly defined methodology. However, Simien (2007) notes that the development of an intersectionality methodology has the potential of advancing knowledge-based research and charting a path for outstanding theoretical and methodological issues in women's research. Whilst the development of intersectionality as a research method is beyond the scope of this research, feminist research is noted to employ a broad range of social science research methods such as qualitative and quantitative research methods to conduct feminists' inquiries (Banakar & Travers, 2005:1-25; Miner-Rubino, Jayarante, & Konik, 2007). Whilst a qualitative method is used to collect data, the research adopts an intersectional feminist framework, the details of which can be found in the next chapter, conceptual framework.

According to Harding & Norberg (2005), qualitative methods are preferred over quantitative methods in feminist research as quantitative methods are often deemed to be empirical where the emphasis is more on quantification of a particular subject area rather than an in-depth representation of women's lived experiences. The justification for qualitative methods is underscored by the nature of this research which more about how to locate the voluntary or forced migration, lived experiences of Nigerian women both before and after their migration into Italy as against the number of women moved. Whilst this research does not underestimate the

importance of estimates of women affected by trafficking for prostitution such estimate do not directly or otherwise facilitate an academic understanding of the place of consent. Although estimates from different sources on the prevalence of the problem as it affects Nigerian women are cited in chapters 6 and 7 this thesis agrees with feminists' critique of the traditional research method which emphasises numbers as a principal approach to knowledge-building (Hesse-Biber, 2007:144). Hence, the majority of feminist research use qualitative research and the current research therefore adopt same.

1.5.1 Qualitative Research

Qualitative research is defined as a 'field of inquiry in its own right' that consists of a 'complex interconnected family of terms, concepts and assumptions' (Denzin & Lincoln, 2011:3). And according to Denzin & Lincoln (2000; 2011) qualitative research consists of case studies, interviewing and interpretive analysis amongst other methods. As a research method, the authors note that qualitative research method serves as an appropriate tool to seek answers to 'questions that stress how social experience is created' (Denzin & Lincoln, 2011). It is a research method that relates to the gathering of and analysis of data in many forms that are not necessarily numeric but aim to achieve profundity on the subject of inquiry (Denzin & Lincoln, 2011).

Snape & Spencer (2003:3) regard qualitative research methods as a research method used to discover, ascertain, construct, and define phenomena experienced by people in definite contexts. To generate data in a qualitative research, Snape & Spencer (2003) identify some specific tools such as interviews, focus group discussions, observations, narratives and the analysis of documentary evidence as essential. Although there are more tools for collecting data in a qualitative research, the current research used semi-structured interviews and analysis of documentary evidence such as case notes from shelters and a deportation camp in Italy as well as a summary of judicial proceedings/decisions on human trafficking in Nigeria.

With respect to recruiting the research participants, sampling was used. In social sciences, sampling is considered an important aspect of research that enables the

researcher to study a part of the target population and yet generate representative data (Ritchie & Lewis, 2003; Singleton & Straits, 2005). One of the advantages of sampling is that it facilitates the collection of data from a representative sample of the research participants, instead of reaching all the target population thereby saving time and resources. Samplings are economical in terms of time, labour and materials and yet provide more detailed information (Sarantakos, 2005). However, the use of sampling is not without challenges. For instance, it requires intense planning and administration and it is generally criticised for difficulties with representation and generalisation of the findings (Ritchie & Lewis, 2003). It is in dealing with the complexity of sampling that Sarantakos (2005) suggest a small population for effective management.

A combination of purposive sampling and snowballing was used to recruit participants for this research. Scholars suggest that purposive sampling is effective in recruiting participants who, in the researcher's opinion, are relevant to the research work whether by reason of the participants' experiences or roles (Sarantakos, 2005; Singleton and Straits, 2005). Maxwell describes the particular characteristics of purposive sampling as a type of sampling in which 'particular settings, persons, or events are deliberately selected for the important information they can provide that cannot be gotten as well from other choices' (1997). Human trafficking being a specialised subject with specialist agencies working in that area it was not a difficult decision to make to use purposive sampling to identify and recruit initial participants who were essentially gatekeepers or principal officers of such agencies. Although further information on the choice of participants recruited can be found in the section on the review of research participants the use of purposive sampling also answer the how and why some participants were recruited.

Purposive sampling is a useful tool in social science research because a qualitative purposive method involves making intentional plans of how to undertake the collection of data. The use of purposive sampling is therefore an indication of how the researcher made some strategic decisions about who the research participants are likely to be, where and how they are to be recruited. But most importantly the choice

of purposive sampling is tied to the nature and objectives of this research. With purposive sampling, the researcher was able to identify the specialist institutions and agencies working on human trafficking. For instance in Nigeria, officers of the national anti-trafficking agency and UNODC amongst others was purposively recruited because they are key anti-trafficking organisations at the national and international levels respectively.

However, purposive sampling is not without its limitations. As mentioned above, the researcher encountered obstacles to obtaining access due to bureaucracy. Purposive sampling is perceived as a form of judgmental sampling based solely on the researcher's judgment (Sarantakos, 2005). But that may not necessarily be the case in this research because it is axiomatic that human trafficking is a specialised subject that requires some level of expertise, and that in itself limits the number of target participants, thus limiting the possibility of any bias in selection. However the fact that the researcher had purposely identified these specialist agencies did not guarantee the recruitment of participants. In the context of this research, this was a major challenge on the field that required alternative arrangements.

Snowballing or chain sampling was used both to compliment purposive sampling and to recruit other research participants based on the recommendations of participants purposefully recruited. The snowball technique is usually used to refer to a method where, already recruited participants are asked to recommend other people who they believe fit stated criteria for research (Singleton & Straits, 2005). The snowballing method is particularly useful for a dispersed and small population or where the selection criteria might not be widely disclosed due to the sensitivity of the subject (Sarantakos, 2005) such as was the case in this research. Snowball or chain sampling was particularly useful in Italy where the initial participants provided a good platform to identify other practitioners and organisations that were working in the subject area.

The disadvantage of this method lies in the fact that where new participants are recruited through existing participants the much needed diversity in sampling may be

compromised (Ritchie & Lewis, 2003). However, to avoid such risk the researcher was proactive and was able to recruit other participants on-site. For instance an officer at the Ponte Gallare Deportation camp in Rome, Italy was recruited during one of the visits to the camp. Secondly, data from some recommended individuals were carefully considered before being used in this thesis. Thus, where the information is not first-hand some level of corroboration is often sought before such claims are used in this thesis. For instance an officer of an international organisation in Nigeria alleged that Nigerian women moved into prostitution were frequently subjected to different forms of exploitation. Further inquiry from the officer suggests that most of the information supplied by the officer was not within the officer's personal knowledge but based on what the officer read from previous reports of the organisation.

The initial design favoured the use of focus group discussion against interview but for reasons of either practical or ethical concerns, or both, focus group discussion was jettisoned for semi-structured interviews. The adoption of qualitative method meant that data was generated through interviews which took the form of a semi- or unstructured interviews as opposed to structured interviews. Data from the participants was generated using interviews and open-ended questions. Interviews involved verbal questioning of participants and it is one of the commonly used methods through which qualitative data is generated (Sarantakos, 2005; Kvale, 1996). Interviews are aimed at both collecting data and gaining insight into the interviewees' perceptions of the subject area (Kvale, 1996). According to Kvale interviews as '... an interchange of views between two or more people on a topic of mutual interest, sees the centrality of human interaction for knowledge production, and emphasizes the social situatedness of research data'(1996: 14). Thus Cohen, Manion & Morrison (2000:p.267) state that the '...interview is not simply concerned with collecting data about life: it is part of life itself, its human embeddedness is inescapable'. For research focusing on women's issues, Sarantakos (2005) has argued that interviews are a useful method of collecting data because of its value for openness. According to Oakley (2000) feminist researchers are often critical of the use of interviewing practices that operate in a single directional method or that are based on a rigidly graded order between the researcher and the target group as it is

morally indefensible. Unstructured and in-depth interviews are perceived as a better option for different reasons, but more particularly because it promotes a thorough discussion between the researcher and the target group which is essential to feminist analysis.

Semi-structured or unstructured interviews are flexible and may sometimes take the form of conversations. This provides the researcher the opportunity to take up issues as they arise and at the same time set the tone for the discussion. Semi structured interviews facilitate immediate responses to questions, the opportunity to clear any ambiguities as well as creating a friendly environment for data collection (Gorman and Clayton, 2005). This makes the semi structured interview valuable to feminist research and also helpful in understanding the processes involved in the movement of women for prostitution. Semi structured interviews can also serve to balance the power relations that may exist between the researcher and the participants (Oakley, 2000). Semi-structured interviews adopt a method of collecting data based on the individual participant's account, experiences and perceptions of a phenomenon using a list of key issues critical to the research objectives as a guide (Arthur and Nazroo, 2003). Semi structured interviews encourage the participants to share their profound experiences using their own words.

Accordingly using semi-structured interviews, the researcher had a draft list of key topics, some of which were framed as questions to guard against distracting from the main focus of the research (Corbetta, 2003:270). A copy of the sample of guide topics used during the data collecting exercise is annexed to this thesis and marked as Appendix A. Open questions were used more often and the questions do not necessarily follow any particular order, the order being based on the direction of each specific interview (Arthur & Nazroo, 2003). A key strength of using semi-structured interviews was the ability to follow the train of the interviewee's responses in order to explore issues and concepts not anticipated by the researcher (Gray, 2004) and to revise questions to cover developments in the areas under investigation. Thus, in Italy, for instance, the researcher was able to ask probing questions on some of the emerging issues such as the new government policy on street prostitution and the

effect of this on Nigerian women moved in prostitution.

Being able to ask probing questions provides the researcher with the opportunity to explore the notion of consent from the participants' perspective and was particularly appropriate for safeguarding ethical issues that underlie this research. In addition, feminist researchers argue that women have a propensity towards interpersonal skills, making the semi-structured interview technique particularly appropriate for this research (Reinharz, 1992). The use of semi-structured interviews, however, has its limitations. Interviewing skills and techniques take time to refine, and an inexperienced interviewer, such as the researcher, must develop these skills quickly during the field research period. Semi-structured interviews are also demanding in terms of time and financial resources (Gorman and Clayton, 2005). There is the possibility of participants not telling the truth about how they feel on the subject. This might be exacerbated by the artificiality of the interview situation. Some participants are reserved and unforthcoming with information, whilst others prove excessively verbose, their evidence ranging outside the research question. Finally, the interviewer needs to be an active participant in the dialogue in order to prevent the interview from becoming a one-way communication (Oakley, 2000).

Evidence gathered from the semi-structured interviews was triangulated with two other key sources of evidence and data. Data triangulation according to Guion *et al* '... involves using different sources of information in order to increase the validity of a study...these sources are likely to be stakeholders in a program—participants, other researchers, program staff, other community members, and so on' (2011:1). The researcher was given access to a summary of judicial proceedings/decisions on human trafficking cases in Nigeria and to case notes from a shelter in the province of Castel Volturno in Italy and Ponte Gallare deportation camp. The summary of judicial proceedings on human trafficking cases in Nigeria was obtained from divergent sources, including a lawyer who works for NAPTIP. The case notes of some of the Nigerian women held at the Ponte Gallare deportation camp in Rome were accessed by permission of the officers of the Immigration Tribunal, and read in their presence at the camp. Finally, at the shelter in Castel Voltumo province, access was given to read

case notes concerning two successfully rehabilitated Nigerian women who are now self-employed as hairdressers. This access was given subject to an undertaking to maintain the confidentiality of the women and the source of the information. And it is for this reason that the shelter cannot be named.

1.5.2 Target Population and Review of Participants

According to Sarantakos (2005), one of the key decisions to be made at the onset of a research project is the choice of research participants. And according to Tyldum (2010) the target population for the purposes of any research is the group being researched or the group from whom the researcher intends to gather data. In conducting research such as this, therefore, the appropriate target participants are the women moved into prostitution, but a number of challenges made this the least viable option. In addition to the constraints of accessing women moved into prostitution, a key problem with respect to Nigerian women moved into prostitution is that most of the women do not wish to be identified as such, especially women from cultures that stigmatise women in prostitution. And according to some scholars such as Brunovskis & Tyldum (2004) and Zimmermann & Watts (2004), it may be difficult to obtain information about on-going exploitation or abuse due to safety concerns. Another concern raised by Rock (2002) regarding the challenge of obtaining data from people who have experienced abusive situations is that such a project has the potential of increasing the vulnerabilities of the people affected.

As earlier mentioned, some participants from specialist organisations were recruited through purposive sampling from, *inter alia*, the Nigerian Embassy in Rome, Italian Embassy in Nigeria, UNICRI, IOM (Nigeria and Italy), Caritas Italiana, WOTCLEF, CYPF, UNODC, Nigerian Immigration Service, Ministry of Interior (Italy), ILO, The Nigeria Police and NAPTIP are some of the organisations purposely recruited. Other participants includes PNG2 Human Rights Monitor Nigeria (HRM), PNG6 of LEADS-Nigeria and PNG15 as a member of the International Federation of Women Lawyers (FIDA Nigeria, Kaduna Branch), all of whom have over twenty years' experience of working with vulnerable people in Nigeria.

In Italy, where the researcher had limited knowledge of the environment, the Nigerian

Embassy in Rome became a major gateway to reach local organisations and individuals working with Nigerian women moved into Italy for prostitution. This approach served the purpose of both identifying individuals and organisations that could participate in the research, and to avoid the researcher being misled through language constraints. Three officers were recruited from the Embassy, a senior consul with extensive experience on trafficking issues involving Nigerians in Italy and other diplomatic missions. Two other officers were recruited from the Nigerian Embassy who by reason of their roles works closely with the Italian Immigration Service. The officers from the Nigerian Embassy facilitated the researcher's visit to Ponte Gallare deportation camp.

The snowball sampling technique was used to recruit other participants such as PNG7, another officer from NAPTIP, as well as PNG13 and PNG16 from the National Human Rights Commission (NHRC). PNG19 is the desk officer on Nigerians in the diaspora. The officers from ILO and UNODC both recommended PNG12, the officer overseeing the human trafficking unit at the office of the European Delegation to Nigeria. The Nigerian Embassy in Rome was also helpful in identifying key individuals and organisations, especially from the Catholic Church, For instance, the Nigerian Embassy referred the researcher to Sister Eugenia Bonetti who although unavailable to be interviewed herself, facilitated the recruitment of other participants including the shelter in the Castel Volturno. Sister Eugenia Bonetti also facilitated the recruitment of PTL5, a Catholic nun who works in a shelter and has over 11 years of experience working with migrant women moved into prostitution in Italy. Other nuns interviewed at the shelter include PTL6 and PTL7 of Castel Vulturno. But other participants like PTL13 of ICMHD and PTL14 of Oxfam/MSF were recruited because of their knowledge and expertise of the subject. These two participants were recruited at a one week training programme on forced migration.

The main reason for recruiting participants was their role in working with women moved for prostitution at the time of the research. This was the rationale for the use of purposive sampling which was used to identify gatekeepers of key anti-trafficking organisations. But there were a few instances where even gatekeepers were not

appropriate participants as a result of their role not being directly connected with the overarching focus of the research. Another criterion was the length of time the participant had worked in that role or, in the case of nongovernmental organisations, how long they have been exposed to or worked on human trafficking and women issues. For instance PTL13 and PTL14 (both of whom have extensive experience in the field of medicine and migration issues were recruited from ICMHD and Oxfam/MSF), PTL1 of IOM Rome and PNG7 of NAPTIP as well as one of the senior consular officers at the Nigerian Embassy in Rome are good examples of participants who possess extensive experience on the subject area by reason of the length of time they have spent on the job in their respective organisations. Other examples include PNG2, PNG6 and PNG15, all of whom possess over 20 years' experience working as human/women's rights activists with indigent Nigerians, whose insight of the subject and critical analysis enriched the research findings. Another good example of a participant who was recruited based on his knowledge of the subject is PNG17 of the Ahmadu Bello University Zaria. PNG17 has carried out extensive public speaking on the subject at different fora and authored a book on human trafficking in West Africa. These and other participants as the thesis demonstrates were able to refer to specific examples within their knowledge to support their respective positions. The third criterion is that the information provided by the participant should be one that they have first-hand information, not what they read from books or newspaper reports.

At the planning stage, the target was to recruit a minimum of 45 participants from both Nigeria and Italy. This number of participants was judged practicable given the specialised nature of expertise in human trafficking, and with even greater emphasis expertise in the issue of consent, the central focus of this research. Based on the poor quality of evidence and data gathered from some participants with limited or marginal knowledge of the core areas under investigation, it was estimated by the researcher and supervisory team that extraneous evidence and data from non-specialists would dilute the value of study. So, whilst the target number of 45 participants was met, data from some participants proved unusable. The research ultimately relied on evidence and data gathered from semi-structured interviews with

40 participants, 22 from Nigeria and 18 from Italy. In terms of gender, 23 were men and 17 were women.

1.6 Positionality and Reflexivity

Although the issue of positionality has remained a contested issue in qualitative research, feminists' scholarship have played a crucial role in accentuating the importance of the different identities a researcher may possess and how these identities may influence the research findings (Anderson, 1998; Vanderbeck, 2005). Vanderbeck's (2005) work for instance highlights the different ways in which the interpretation of gender may influence and determine research outcomes. Sometimes it may be difficult for a researcher to distance herself from the participants' perspective especially when the researcher is an insider. And in this research there are some identities that sets the researcher apart as an insider, for instance the researcher in this project is a Nigerian woman, currently resident in the United Kingdom and conducting a research on Nigerian women moved into Italy for prostitution. And having also visited other countries including Italy whose language and culture the researcher did not understand, it is not difficult for the researcher to identify with the challenges faced by migrants women in destination countries especially that in the context of the women being researched they are not just coerced migrants they may also have irregular immigration status.

The researcher recognises her own multiple identities such as being Nigerian migrant woman currently resident in another, religious and social values; age; sexual orientation; and professional experience that may make the researcher bias. The clear identification of such multiple identities is necessary to ensure that they are distanced from the research methods and findings. Consequently, in analysing the research data and drawing up the conclusions, the researcher kept to the role of objective researcher whose primary responsibility is to analyse the data as much as possible from the perspective of the participants. Hence, the thesis demonstrates objectivity by ensuring that the voices of the participants run through the findings. This I did by ensuring that the words of the participants are quoted verbatim as much as possible and attempt to explain such words are only for purposes of affirming or

criticising the claims made.

Reflecting on some of the challenges encountered immediately before and during the fieldwork, the researcher found that, contrary to her assumption that being a Nigerian would be an advantage during the fieldwork in Nigeria did not guarantee ready access to people and organisations. The role of hierarchy in Nigerian society proved an obstacle. Doors often opened if the researcher was referred by an individual with more authority or if the researcher could present the business card of someone in a position of authority. The experience in Italy was different as most of the participants were more accessible to the researcher and it was only in few cases that some participants were unavailable.

In recruiting some of the participants from nongovernmental organisations especially in Nigeria, personal intellectual/practitioner interests played a key role in that professional experience influenced the choice of some participants especially those with human/women's rights background. In spite of such personal interests, the participants were not treated any differently from the other participants and the findings were analysed in a manner that also best represents the participants' positions. The research findings suggest that the research outcomes benefited from the diversity of participants recruited from diverse backgrounds and the richness of their varied experiences on trafficking issues.

1.7 Ethical Considerations for Researching Human Trafficking

There are a number of ethical concerns that a researcher should be prepared to tackle before setting out to conduct any academic research. For instance, there are varied ethical issues to be considered with respect to conducting research of this nature especially as it relates to gathering sensitive data on vulnerable people from individuals some of whom are caregivers (WHO, 2000). With respect to ethical considerations in academic research, Coventry University has a robust ethics procedure that seeks to protect the integrity of research output, the target participants and the researcher. There are different levels of ethics procedure to be passed before a researcher can be cleared to collect primary data. Principally, there are ethics committees at different levels depending on the nature of the research and the

potential risk. To identify the level of risk ethics questionnaires are designed to assess the level of risk in a given piece of research which then determines the sort of ethical approval required. The ethics questionnaire used to assess the risk for this research project suggests the risk level to be of a medium scale thus bringing approval within the limits of the researcher's host faculty, Business, Environment and Society (BES) Ethics Committee. Ethical approval for this research was, therefore, obtained from BES Ethics Committee in April 2011, a copy of which is annexed to this thesis and marked as Appendix B. Further to Coventry University policy on health and safety regulations on projects, the researcher and the supervisory team carried out comprehensive risk assessments to identify potential hazards and how such hazards can be eliminated or minimised before the researcher embarked on the fieldwork.

To obtain informed consent of the participants, participants' information sheets and consent forms in line with Coventry University standard forms were administered to all participants before interviews were conducted. The participants were assured by the consent form and the participants' information sheets that their contributions will be treated with strict confidentiality and reported anonymously. Copies of the participants' information sheets and consent forms are attached and marked as Appendices C and D respectively. Thus in keeping with good practice, institutional and legal requirements on confidentiality, participants were informed of measures put in place to protect their data and personal information through the participant's information sheet. Also contained in the participants' information sheet is the participants' right of withdrawal at any stage of the research and where to go if they have any concerns or fears. And where participants consent, interviews were audio taped and subsequently transcribed verbatim. This process enhanced the validity of data generated as it afforded the researcher a word for word description of what was said during the interview. The transcribed data was then analysed thematically. Note taking was used as an additional safeguard to data preservation in cases where the participants objected to their voices being recorded.

Considerable effort was made to ensure the confidentiality and privacy of the interview settings and the person of the interviewees. Data collected was stored in a

secure way to protect the participants' confidentiality, soft copies of such data were password protected and hard copy locked away in the researcher's filing cabinet. Upon completion of this research the audio tapes will be wiped and hard copies destroyed. Anonymisation was used to increase the safety of data processing and to protect the identity of participants and in some cases their organisations as well. This is to comply with the United Kingdom Data Protection Act (1998), by which the respect for anonymity and privacy of research participants is not just a matter of research ethics but one that has legal implications as well. Whilst this research ensured the protection of the participants' anonymity the ownership of the data from such participants was not compromised.

1.8 Research Validity

In qualitative research, it is essential to ensure that the evidence and data accurately reflects the intention of the participants. The topic guide used during the semi-structured interviews started with general issues from which the questions were gradually narrowed down to specific questions that are key to this research. The interviews were tape-recorded (while the researcher also took notes, the notes were particularly useful in cases where the participants object to voice recording) and then transcribed. Telephone and email was used to follow up on any gaps identified during transcription. The richness of the data is demonstrated in the presentation of the participants' positions on the subject which in most cases were quoted verbatim in the thesis. And as described, above, data triangulation was used to check and establish validity (Patton, 2002). To effectively locate consent therefore, Crenshaw's (1989; 1991) intersectionality was used to identify the multiple identities of Nigerian women moved into prostitution to classify the 'consent facilitating elements' and/or 'consent nullifying element'. The intersections between gender and other categories of identity deepen the understanding of the hidden issues in the movement of Nigerian women for prostitution.

1.9 Limitations and Constraints

Experience from Nigeria and Italy suggest that some practitioners were generally not disposed to share information even when they are aware of the purpose and use for

such information. The foregoing was confirmed by PTL1 (IOM Italy) who states that it is not uncommon for some practitioners doing research in the subject area hoard information, thus some of them are often very reluctant to share information. For instance, some respondents with whom the researcher had previously scheduled appointments far ahead of time suddenly became unavailable on the due date, some without informing the researcher and further attempt to contact them failed.

The other challenge to accessing governmental organisations and some international agencies is with respect to the unnecessary bureaucracy in obtaining official approval before participating in a research. The researcher's experience at the NAPTIP office in Nigeria explained above is a good example. Another good example in Italy is the unsuccessful attempt to interview public prosecutors. It was not just that this request was refused, some officers of the Ministry of Interior in Italy with extensive knowledge of the subject only agreed to be interviewed under a condition of anonymity. The same was also the case of some of the respondents from the Nigerian Immigration Service and IOM Italy. However the ILO and the UNODC offices in Nigeria were exceptions to this common practice, although the researcher was referred to the officers in charge of the trafficking units, the reason for this was explained to the researcher.

Whilst most participants from non-governmental organisations were quite willing to participate in the research, only a handful of those from government agencies were willing to do so. In addition to this when some of them did participate they declined to sign the consent forms or to record their voices and requested that their information be treated with complete anonymity. Some of the participants specifically requested anonymity due to the sensitivity of the positions they occupy in the organisations they work with. Thus as part of research ethics, protecting the confidentiality and privacy of participants, the most direct details of such participants were anonymised and where the participants so agreed reference was only made to their roles or organisations.

Thirdly, the procedure of obtaining institutional clearance in accessing the target population in both countries for the purposes of interviewing an official spokesperson

of institution/agencies on human trafficking was time-consuming. Other limitations include ethical considerations, financial and time constraints which largely influenced issues like the scope of the research, duration of the field trip and even the number of participants recruited.

Lastly, the information from the participants was limited because they were not victims of trafficking, thus their position may not be wholly taken as representing the victims of trafficking. The direct contribution of Nigerian women actually moved into prostitution in Italy would have enriched the research in a significant way. Nevertheless most of the participants are people who have worked or are still working with women moved into prostitution and this to a very large extent gives some credibility to their contribution. Findings therefore, cannot be generalised.

1.10 Structure

The thesis is structured into eight chapters including the introduction and the conceptual framework. The first chapter provides an overview of feminists' debate on prostitution and trafficking for prostitution. It then sets out the aim and objectives of the research as well as the methodology adopted to achieve the objectives. This is followed by chapter two which examined the debate between the two dominant opposing feminists' groups on prostitution as sex work, third-way feminist's stance and the African ethico-feminism. The foregoing was adopted with Crenshaw's (1989; 1991) intersectionality to formulate the theoretical framework underpinning this research, intersectional feminist framework.

Chapter three starts by examining the causative factors commonly cited as facilitating the movement of women for prostitution and the possibility that the same factors may also be cited as being responsible for similar phenomenon. Whilst the thesis acknowledges that there are some characteristic features of trafficking for prostitution that should set it apart from other related phenomena, chapter three in attempting to such distinction demonstrates that there is no watertight of achieving that without taking into consideration the peculiarities of each case. Thus the chapter highlights the conceptual challenges that may arise especially in the light of the overlaps between human trafficking and human smuggling. The areas of overlap become more

complex when labour issues are introduced into the discourse of the transnational movement of women for prostitution. The chapter raises the concern that the requirement of consent rather than helping to clearly delineate the boundaries of both phenomena only further complicates an already complex issue.

The fourth chapter is a contextual chapter that starts by examining the changing nature of consent under international human trafficking law. This chapter also examines the current definition of human trafficking as well as each stage of the process that leads to the offence of trafficking. The chapter also attempts to dissect the different components of the definition and suggests that while consent may be difficult to define, the vagueness and narrowness of the conditions provided by the Trafficking Protocol that may limit or invalidate consent make the requirement of consent problematic. The chapter advances the position that poverty or severe economic challenges may invalidate consent and should be seen as economic coercion, especially in situations where poverty and unemployment are push factors.

The fifth chapter problematises the movement of women for prostitution as a form of labour migration. Whilst the chapter sustains the dominant feminists' debate as detailed in the conceptual framework, ILO labour standards are used to explore and identify the role of consent. This chapter examines key concepts associated with consent such as agency, autonomy and choice which is commonly used in feminists' scholarship to promote women's right of self-determination to become a prostitute.

Chapters six and seven focus on Nigeria as a sending country and Italy as a destination country respectively. The chapters largely draw from primary data generated through semi structured interviews with respondents in both countries. The analysis in this chapter interrogates the role of the *juju* oath ritual and debt bondage in relation to the movement of Nigerian women for prostitution in Italy. The chapters also examine the role of push and pull factors in the context of Nigerian women moved into Italy for prostitution. Although a list of issues, concepts and sometimes questions were used as a guide to frame the interview questions there were slight variations in some of the questions asked in both Nigeria and Italy. For instance, in

Nigeria some of the issues centered on recruitment and movement of Nigerian women paying particular attention to issues that relate to the condition of the women prior to recruitment, conditions of the recruitment and the presence or otherwise of deception, coercion and force. In Italy issues relating to recruitment were also raised in the data from Italy but the focus was more on the conditions under which Nigerian women moved into Italy for prostitution were made to work as prostitutes, as well as the reasons why the women are often unable to discontinue the relationship. Thus chapter seven raises the issue of identification of Nigerian women moved for prostitution and how this frustrates the State response to actual victims of trafficking.

The eighth chapter examines the issue of consent in relation to the lived experiences of Nigerian women moved into prostitution and interrogates the effect of physical and psychological sufferings on the voluntariness of the women to work in prostitution. Primary data as collected from the participants especially those with experience working with migrant women and health experts who have also worked with migrant women are used to identify the impact of such sufferings on the women. The chapter then adopts the findings to determine whether can be consensual exploitation and the minimum threshold of such exploitation as to keep the State from interfering.

Chapter Two

Conceptual Framework

Full of apparent contradictions and discrepancies, the history of modern prostitution control offers a dynamic perspective on the private lives of women as well as the public functioning of medicine, patriarchy and the nation state and emphasizes the need to understand how gender and sexuality are interrelated inextricably to race, cultural diversity and economic circumstances. (Guy, 1995:182)

2.1. Introduction

The trafficking of women for prostitution is an issue that has been on international agenda since the 19th century (Barry, 1995; Limoncelli, 2010; Gallagher, 2010; 5). And since then a compendium of legal framework has developed, the development in this area can be attributed to the efforts of individuals and organisations, especially the women's movement. Feminists' scholarship has greatly influenced the modern construction of trafficking for prostitution hence the adoption of a feminist framework. The earliest feminists' engagement on prostitution as led by Josephine Butler advocated for the deregulation of prostitution, which as Barry (1995) argues draws a false distinction between voluntary and forced prostitution. Thus Barry (1995:92) notes that "the liberal emphasis on consent, which, in Butler's time, was developing as an ideology of industrial capitalism, has become the superficial and technical distinction that obscures the harm of the act itself." Barry (1995:103,109) therefore argues that the false distinction between voluntary and forced prostitution through State regulation, eventually facilitated the trafficking of women for prostitution. Doezenia (2010) and Limoncelli (2010) also ascribed the visibility of the women trafficking to feminists' engagement with the State on prostitution, but note that the contemporary response to human trafficking started to crystallise in the 1970s/1980s (Doezenia, 2010). Whilst feminists' movement through the different ages may have contributed to the international visibility of women's trafficking for prostitution, their ideological differences encouraged the conflation of trafficking with prostitution and trafficking with human smuggling.

From the perspective of western world, there are different feminists' standpoints on prostitution and by extension, trafficking for prostitution such as the Marxist,

Existentialist, Socialist, Liberal and the Radical feminist amongst others. But it is commonly noted that feminists discourse on women trafficking and prostitution is dominated by the works of feminists from the radical and the liberal groups (Scoular, 2004; Srikantiah, 2007; Cavalier, 2011). The difference between these feminist groups may not be clear cut whilst they may differ in their ideological position on prostitution and trafficking, they still have some commonalities. For instance feminists' thought is generally grounded on the status of women and their experience (Mohanty, 1995) but the point of disagreement is how to address the inequality that women face as well as how to class and address women's experiences. The issue of prostitution is one of such subjects where feminists are divided as to whether it objectifies or liberates women. With respect to prostitution the two leading feminists' position appears to be irreconcilable, thus Freeman notes that the two dominant approaches to prostitution are not only 'incompatible, it is hard to imagine both groups on the same side of the prostitution debate' (1998:8).

In contemporary times there have been attempts to develop a middle ground feminist position between the two diametrically opposing feminist groups, of note is a third-way feminist account by Cavalier (2011:1445-1455). Third-way feminism rejects the weaknesses of both the liberal and the radical feminists, but accepts their strengths (Cavalier, 2011:1446). There is also the third world feminist perspective on prostitution and trafficking for prostitution as advanced by Fayemi (2009). According to Fayemi (2009) an African ethico-feminists' perspective offers an all-inclusive answer to the problem of trafficking for prostitution in Africa. Whilst this thesis does not promote one feminist ideology over another, feminists' analysis of prostitution and by extension, trafficking for prostitution offers a rich scholarly platform to consider the place of consent in the transnational movement of women for prostitution. But it is important to state that none of the feminists approaches as a stand-alone concept is capable of effectively responding to the problem of transnational trafficking of women for prostitution.

Consequently, this thesis posits that to effectively determine whether Nigerian women moved into prostitution are victims or free agents, there is need to consider and

critically analyse the totality of the condition of the women prior their movement, while in transition and at the destination country especially the state under which the women work as prostitutes. For that reason this thesis adopts an intersectional feminist framework to explore the influence of multiple identities in either facilitating the voluntary or coerced migration of Nigerian women for prostitution in Italy. The chapter starts with the dominant feminists' debate and two other emerging feminists' stance on prostitution and trafficking for prostitution. The chapter then went on to examine the concept of intersectional feminist framework as used in this thesis.

2.2. Feminist Debate on Prostitution and Trafficking for Prostitution

It is also important to state that feminism as used in this research refers to Taslitz's (1998) conception of feminist work. And according to Taslitz feminism is '... any way of looking at the world that draws on women's historical and current life experience as a source for learning and growing ...' (1998:8). For the purposes of this research, prostitution is used in the sense of 'women prostitutes catering to a male clientele' or 'sexual demands and exchanges occurring within a set of social relations mostly heterosexual where men buy sexual services of women' (Freeman, 1989-90:77; Outshoorn, 2011:128) respectively. This is because women's lived experiences in prostitution cannot be easily separated from gender inequalities rooted in patriarchy (Lerner, 1968; Dworkin, 1988; Pateman, 1988; Munro & Giusta, 2008). And according to Freeman, the scale of male prostitution cannot be compared to that of women prostitution because men 'have not endured a history of objectification and subjugation based on their gender' (1989-90:77). Askola also notes that the consideration of gender (in) equality:

... makes the case for why any attempt at a fuller understanding of and response to trafficking cannot afford to ignore the fact that the phenomenon is fundamentally a manifestation of a complex range of gender(ed) inequalities. Moreover (and in a related vein) it argues that an investigation into feminist legal perspectives is necessary to explain the multiple roles of law as it potentially empowers and facilitates, yet simultaneously constricts and even hampers, the construction of more comprehensive strategies towards trafficking in women for sexual exploitation (2007:21-2).

Still making a case for the current attention on the trafficking of women for

prostitution, Askola argues that 'trafficking in women for sexual exploitation is a particularly gender-specific phenomenon, which, in a manner is slightly different from, for instance, trafficking in maids for domestic work, invokes difficult issues of sexuality, freedom, choice, gender equality, and so on' (2007:16).

According to Jeffreys (2009) the traditional feminist approach to prostitution was a near universal position that considered prostitution as an institution that oppresses women. But that changed when in the latter part of the 20th century women in prostitution who have traditionally been perceived as passive started advocating for the recognition of their rights as prostitutes. Thus Call Off Your Old Tired Ethics (COYTE) promotes the recognition of prostitution as sex work (Jenness, 1990). Thus the core part of the feminists' debate is whether prostitution can be regarded as an employable career for women or as a patriarchal institution that dominates and exploits women for male privilege. Whilst Chapkis (1997) agrees that women's choices are limited because they are located in a disadvantageous position, the author still conceived of prostitution as empowering for women and therefore advanced that women in prostitution sell 'erotic labour'.

Askola notes that prostitution became one of the focal issues of second wave feminism, 'when the emerging radical feminist analysis of society and male dominance identified sexuality as a central site of women's subordination. It was asserted that in a male-dominated society gender hierarchy is sexualised and eroticised in ways that make domination of women by men seem sexy' (2007:24). With respect to agentic powers of women and how the law perceives women exercising such powers to enter into an agreement, Askola notes that

Unlike early feminist scholarship, which generally believed that the law should and could be impartial and thus called for reform within the system, the second phase of feminism mounted a more radical attack against the view of law as neutral, objective and rational. It was asserted that the seemingly universal values of law turn out to be masculine and the reason the law has those characteristics is that the law is male and incorporates (only) male experience (2007:25).

Radical feminists like Dworkin (1987) and MacKinnon (1987) are of the view that men have always had the dominant law in their favour, and women have been at the

receiving end of men's rule. They therefore do not make any distinction between sex and gender which they see as socially constructed. Dworkin (1987) argues that sexuality is an exercise of male power. Following that same line of argument MacKinnon states:

Sexuality, then, is a form of power. Gender, as socially constructed, embodies it, not the reverse. Women and men are divided by gender, made into the sexes as we know them, by the social requirements of its dominant, form, heterosexuality, which institutionalizes male sexual dominance and female sexual submission. If this is true, sexuality is the linchpin of gender inequality (1989:113).

To the radical feminists, women and men in contemporary society are not merely different from one another; rather men are socially dominant and women are subordinate. The radical feminists' position on prostitution, and trafficking of women for prostitution, largely draws on the scholarship of Barry and the work of an international nongovernmental organisation, the Coalition Against Trafficking in Women (CATW) whose conception of prostitution is based on a male dominated society. Barry equates all forms of prostitution with what she refers to as the 'rape paradigm' (1979:40-43) in which she construes the politicisation of rape and the experiences of women. Barry categorises all forms of prostitution as rape for which there can be no consent and does not conceive of any distinction between prostitution and forced prostitution, rather she categorises them as 'sexual slavery'. *The Prostitution of Sexuality* (1995) is another key contribution made by Barry to the radical feminists' resistance to prostitution as an employable career. With respect to prostitution being a consensual act, Barry argues that consensual prostitution is not possible and that consent is a wrong basis for analysing prostitution because it objectifies women. Advancing the argument that prostitution is a gendered oppression of women, Barry states, 'in this work I am shifting from the nearly singular standard of consent or force in the determination of violation to its full human, interactive bodied experience, to span the range of oppression from individualized coercion to class domination' (1995:22-23).

Another leading radical feminist, MacKinnon (2006; 2011) argues that the term trafficking should include all forms of prostitution whether voluntary or forced.

MacKinnon bases her argument on the claim that no woman ever really makes a voluntary choice to become a prostitute, but rather is forced into prostitution either through coercion or pushed by poverty amongst other social factors. Aghatise (2004) and Ekberg (2004) also do not make any distinction between consensual and forced prostitution, but rather view legalisation of prostitution by states as tantamount to promoting human rights violations of personal dignity and the sexual autonomy of women.

Thus, radical feminists argue that subordination of women based on sex is a fundamental mode of inequality upon which other inequalities are based. With respect to the link between prostitution and the trafficking of women for prostitution, the radical feminist according to Outshoorn (2011) postulates that prostitution drives trafficking and argues that, to combat trafficking for prostitution, prostitution must be proscribed. Accordingly the radical feminists like Barry (1995), Raymond (2002) and Jeffreys (1997; 2008) posit that prostitution and trafficking of women are inextricably linked together and argues for the prohibition of both.

With respect to the idea of prostitution as an employment route for women, Jefferys (2009) notes that the liberal position on prostitution as an economically liberating activity is a product of neo-liberalism which facilitated the rapid growth of the idea of 'sex work' as legitimate work, and prostitution as an expression of women's choice and agency. Jeness (1993) also identifies that the idea of prostitution as 'sex work' was a product of the sex workers' rights movement which started in the 1980s. This movement according to Jefferys (1990) and Raymond (1998) was largely influenced by the idea of sexual liberalism which represented pornography and prostitution as an expression of 'freedom' rather than exploitative acts.

With respect to trafficking for prostitution, Farr (2005) and Farley (2003) state that trafficking for prostitution is beyond the broad issue of migration because it is a crime that violates the human rights of women. On the issue of consent, Raymond (2002) argues that the consent of a victim of trafficking is irrelevant to the trafficking experience. Consequently, Jefferys (2006) posits that to view trafficking for

prostitution as a form of labour migration, amounts to ignoring the harm suffered. Excluding such harm from the realm of human rights' concerns, therefore, banishes it to the private sphere where MacKinnon (2006) argues that the law is blind to the sufferings of women.

Condemning all forms of prostitution including the trafficking of women for prostitution, the radical feminists' concern, is with the harm suffered by women in prostitution (Farley, 2003) and on the basis of such harm, MacKinnon (2006; 2011), Farley (2004; 2003) and Jeffreys (2008; 2009) argue that prostitution and its ramifications amounts to violence against women. According to Raymond

To understand how violence is intrinsic to prostitution, it is necessary to understand the sex of prostitution. The sexual service provided in prostitution is most often violent, degrading, and abusive sexual acts, including sex between a buyer and several women; slashing the women with razor blades; tying women to bedposts and lashing them till they bleed; biting women's breasts; burning the women with cigarettes; cutting her arms, legs, and genital areas; and urinating or defecating on women (2004:1175).

It is in that sense that the radical feminists see prostitution as 'an institution that doles out death and disease' (Raymond, 2004:1182) to women and 'a particularly vicious institution of inequality of the sexes' (Farley, 2004:1117). But a major shortcoming of the radical feminists' position is that it treats all women in prostitution as devoid of the capacity to make decision and choice. Their position tends to focus more on the harm in prostitution as against some women's desire for economic liberation (Doezema, 2010).

Contrary to the position of the radical feminists, liberal feminists make no distinction between forced and voluntary prostitution. Whilst liberal feminism condemns forced prostitution, it conceives of prostitution as sex work and as an economic strategy to empower women (Outshoorn, 2011). One of the leading liberal feminists, Nussbaum (1999) argues that all human beings should be in a position where they can exercise agency and make choices. Nussbaum (1999), therefore, argues that the liberal feminist position on the movement of women for prostitution is based on the principle of equality of all persons and their capacity to reason and make rational choices.

Thus, the liberal feminists' idea of equality of all, conceives women as free and rational agents of their own lives and the choices that they make. Consequently, they take sex work to be an employment choice that a woman can make exercising her autonomy (Nussbaum, 1999).

Another liberal feminist, Doezenia especially in her article 'Who gets to Choose? Coercion, Consent and the UN Trafficking Protocol' explores the challenges around the inclusion of consent in the Trafficking Protocol and especially the debate in the negotiation leading to the adoption of the Trafficking Protocol. Doezenia argues that the radical feminists' position takes a condescending posture which deprives women of their right to self-determination by considering women from a stereotypical perspective as being passive and innocent victims. Doezenia in a more recent work, *Sex Slaves and Discourse Masters: the Construction of Trafficking* (2010:144,151,157) mentioned the invisibility of sex workers during the negotiation leading to the adoption of the Trafficking Protocol, and argues that the issue of consent is shaped by the stance of the earliest international human trafficking law on consent.

The liberal feminists view prostitution from a contractarian perspective as a private business transaction. Thus the liberal feminists posit that women are free to enter into such contracts and in so doing the liberal feminists equate prostitution with any other profession arguing that the women in prostitution only sell sexual services and not their bodies. This group of feminists frames the migration of women for prostitution as an expression of a woman's right to self-determination and 'choice' rather than an act that is coerced (Doezenia, 1998:37). The phrase 'sex work' which was first used by Carol Leigh in 1978 has been adopted by the liberal feminists to redefine prostitution as an income-generating activity or form of employment for women in order to improve the working conditions of women in prostitution (Doezenia 1997:4; Kempadoo 1998:5), or to make it more acceptable as work (Agustin, 2005).

Weitzer (2007) faults radical feminist narratives that depict women in prostitution as victims just to promote the agenda of a moral crusade. Weitzer argues that the radical

feminist position ignores accounts of women who frequently leave dismal living conditions in the home countries to survive in prostitution. Thus for Weitzer (2007) and Sharma (2005), the idea that women moved into prostitution are trafficked victims who must be rescued, ignores women's agency and choice. Moreover, Agustin (2007) notes that the movement of women for prostitution is not only driven by the desire for economic liberation, but also by an innate aspiration to migrate.

The liberal feminists see the economic consideration as a form of contract that is borne out of the private ownership of the property, the property in this respect being the woman's body. According to Bell (1994), the liberal feminist conceives of women in prostitution as using the ownership of their own bodies as saleable assets which can be used to offer sexual services in return for financial consideration. Thus Sloan & Wahab, citing early writings of Marx, state that 'prostitution is only the specific expression of the universal prostitution of the worker' (2000). Marx's argument is based on a conception of capitalist ideology that views workers as people who work to survive. Thus, the liberal feminist position on prostitution is that the labour of a woman in prostitution and people in other forms of employment are one and the same.

In that light, Overall argues that in the context of global economic insecurity and inadequate education, a woman's capacity to choose to become a prostitute should not be viewed as distinct from the choice to undertake 'other forms of traditional women's work' (1992:713). Jaggar (1991) equates the labour of a worker under a capitalist system with the sexuality of a woman in prostitution and argues for minimum interference by government in the lives of individuals who have made the choice of sex work. Thus, Jaggar (1991) argues that prostitution is a form of work involving a woman freely contracting out her sexuality for a wage like any other waged worker.

Sharma further contends that the conceptualisation of women moved into prostitution as victims fails to 'understand how the processes of capitalist globalization and the consequent effects of dislocation and dispersal shape the mobility of illegalized

migrants' (2005: 88-9). She argues that the rhetoric of victimised women moved into prostitution only encourages a 'moral panic' which is used to validate repressive immigration law. With respect to the harm associated with prostitution, Weitzer (2005), whilst not denying the issue of harm, raises methodological concerns about most of the empirical research undertaken by radical feminists to support their claim that prostitution is exploitative, criticising the findings of such research as compromised. As to the radical feminist contention that prostitution is intrinsically violent and a form of violence against women, Weitzer replies that such a 'proclamation is neither verifiable nor falsifiable' (2005:942).

The liberal feminists' position according to Fechner (1994:30) is greatly influenced by the liberal political theory of the Enlightenment thought which postulates that all human beings are of equal capability, autonomous and rational individuals. Early liberal feminists according to Fechner used liberal ideology to advance equal rights to education and other social benefits for women. The liberal ideology was extended to the issue of prostitution to advance the position that the idea of women as weak and incapable of consenting to prostitution is borne out of stereotypical roles of women which limit women's life opportunities. Liberal feminism is of the view that men and women should not be treated differently and that the law should not be used to discriminate against women (Fechner, 1994). Drakopoulou (2007) also notes that the liberal feminists in order to free women from oppressive gender roles advance the position that women's choice to enter into prostitution is part of women's inherent political rights.

The problem with the liberal feminists' position is that they oversimplify the issue of equality and choice, and ignore the role that structural inequality and the multiple discriminations against women play in limiting women's autonomy and agency to consent. Secondly, their position also ignores the role of educational status and knowledge of all material facts as prerequisites to the choice and freedom to make personal choices. Thus, the liberal feminists' treatment of all women in prostitution as equally knowledgeable of all material facts on prostitution is overstated. And the extension of such assumption to migrant women moved into prostitution portends

exposing trafficked women to further exploitation. Finally, the equality sought to be established by the liberal feminist is not qualitative because it is only focused on financial gains to the detriment of other more important issues that may be injurious to the life and wellbeing of the women. The idea that the legalisation of prostitution will lead to reduction in incidences of trafficking for prostitution is not empirically supported and such claims have been refuted by scholars (Bailey, 2009/2010; Cho *et al*, 2013; Jakobsson & Kotsadam, 2013)

Whilst the radical and liberal feminists are engaged in a 'death match for theoretical primacy' to the detriment of women trafficked into prostitution, Cavalier (2011:1445) advances what could be a middle ground feminist position, third-way feminism, which seeks to harmonise the strength in the positions of the two dominant feminist groups. Cavalier's hybrid position is meant to serve a pragmatic purpose of 'implementing effective public policies that might obviate the need for continued infighting in the anti-trafficking community'. And to effectively harness the strength of the two dominant feminists' groups, third-way feminism is grounded on four key tenets: the first tenet Cavalier like the radical feminist recognises structural inequalities under which women make life changing choices. Cavalier also notes that women's multiple discriminations on the basis of the gender is a universal phenomenon. The second tenet of Cavalier's third-way feminism also takes the radical feminists' position from a consistent feminism attempts to explain that women as a class can be better studied through their experiences. Accordingly the author states 'the third-way theory of trafficking for sexual purposes accounts for the class-based nature of these oppressions' (2011:1448). But because the individual experiences of women may differ Cavalier advances the position that interventions should be person centred thereby arguing that there is no 'monolithic, one-size-fits-all intervention.'

Cavalier's third tenet agrees with the liberal feminists on the need to integrate women's voices into interventions instead of others doing it for them. Other scholars like Lobasz (2009), posits that the non-inclusion of women's voices into interventions deny undermines trafficked women's agency. Whilst Kelly agrees that trafficked women's voices are rarely heard in approaches to deal with the problem, she notes

that “many have no opportunity to participate because speaking out can literally endanger their future safety, as their inclusion in their own communities requires that they pay a further price of not discussing what they have endured (2005:256). The fourth tenet of Cavalier’s third-way feminism seeks to make room for the possibility of women’s agency even under exploitative situations by leaving the choice of how to oppose oppression to the women involved. Cavalier (2011:1448) states that “Oppressions occur socially, and can be opposed both socially and individually; the choice of how to oppose oppression remains with individual women. This element of the project acknowledges that oppression’s impact is far reaching, but strongly asserts women’s ability to stand in opposition to oppression”.

The point of disagreement with Cavalier’s (2011) postulations lies essentially with the fourth tenet because it simply leads back to the original debate between the two dominant feminists’ positions on prostitution and trafficking and therefore does not advance anything new. In advancing this fourth tenet Cavalier relies on Amartya Sen’s (1999) use of ‘agent’ as “someone who acts and brings about change, and whose achievements can be judged in terms of her own values and objectives, whether or not we assess them in terms of some external criteria as well” (1448). It is submitted that such a position is too idealistic and may be far removed from the reality of trafficked women’s experiences. For practical purposes it is difficult to see how a woman in an exploitative situation may be able to bring about positive change and achievement without any external support except of course if such a position is predicated on the idea that trafficked women consented to their exploitation. This thesis contends that third-way feminism as proposed by Cavalier for practical purposes may be used to empower women seeking to migrate to help them take at informed decision. Although this is more of a preventive measure it is submitted that this option should be the primary focus of counter trafficking initiatives and it is in line with one of the core purposes of the Trafficking Protocol. Whilst this thesis does not claim that trafficked women completely lack agency, contrary to Cavalier’s position, it is argued that trafficked women’s agency whilst in exploitative situation is so diminished that most of them unable to make informed choices. In reality a woman whilst in an oppressive situation may be in a worse situation than she was before she

was trafficked, and if her agency is in doubt prior trafficking exploitation may only serve to further diminish her agency except where there is appropriate intervention. For this group of women it is submitted that the better position will be to help them get over their exploitation by supporting the women to overcome their exploitative situation and thereafter empower the women for the future. This latter position in the long term will serve to prevent the possibility of re trafficking.

Another feminist strand advanced by Fayemi (2009:206) unlike Cavalier (2011) disagrees with the positions of both radical and liberal feminists on the basis that they are grounded on Western ideology. Fayemi (2009:207-9), in opposing the radical and liberal feminists, advances 'African ethico-feminism' as a more effective theoretical tool to addressing the problem of women's trafficking for prostitution. Fayemi's African-ethico feminism views prostitution as intrinsically wrong in that it objectifies women and, therefore, the involvement of women in prostitution, is not a choice freely made by the woman. Borrowing from the radical feminists' precepts, Fayemi reiterated MacKinnon's (1993; 2011) position, that questions the liberal feminists' position which views prostitution as a matter of free choice. Thus, Fayemi like MacKinnon questioned why women with the fewest choices are most likely to become prostitutes. However, Fayemi also disagrees with radical feminists arguing:

African ethico-feminism unlike radical feminism, condemns not only the acts of prostitution and female trafficking on both moral and legal grounds, but in addition, condemns prostitutes, their clients, pimps (traffickers) and the trafficked as immoral agents. Hence, supports their vigorous prosecution by the law (2009:207).

Fayemi's (2009) is premised on the basis that the problem of prostitution cannot be solved by regulation or criminalisation, therefore he advances the position that such options should not be made available because it will be ethically unjustifiable. It will appear that Fayemi (2009) is more concerned about the morality (ethical justification) of prostitution than inquiring into the voluntariness of the women involved. It is therefore not surprising that Fayemi's position conflates prostitution with trafficking with consequential effect of calling for the criminalisation of both trafficking for prostitution and prostitution.

This position runs contrary to the spirit and letter of the anti-trafficking legislation in that it treats trafficked victims and their traffickers as equally culpable. African ethico-feminism also ignores the possibility of women who may have voluntarily migrated in the exercise of their autonomy to work as prostitutes thereby violating their personal autonomy. African ethico-feminism failed to recognise the structural inequalities that confront African women thus, Fayemi's postulation is not concerned with the deep rooted issues such as poverty, which limits African women's choices and pushes them to migrate for prostitution. What makes African ethico-feminism a feminist position is unclear because it does not in any way advance the interest of women, rather it is tainted with patriarchy; especially that it calls for the criminalising of women trafficked into prostitution. Fayemi's African ethico-feminism not only fails to advance the current debate on the role of consent in the movement of women for prostitution, in the context of Nigerian women moved into Italy for prostitution, African ethico-feminism further complicates the conflation of human trafficking and human smuggling. In the context of Nigerian women moved into Italy for prostitution, detailed discussion of the implication of Fayemi's African ethico-feminism is made in chapter six.

2.3. Researching the Movement of Women for Prostitution: An Intersectional Feminist Framework

According to Raymond (2002:8) the trafficking of women for prostitution can be better understood when the factors that facilitate women's migration and entrance into prostitution are considered, and Crenshaw's (1989) intersectionality offers a way of questioning the role such factors through intersectional analysis. Crenshaw's (1989) intersectionality is based on the experiences of women of colour from which the author advanced a Black feminist analysis of race and gender in policy formulations. Crenshaw's (1991) structural intersectionality particularly offers a way of understanding how race, gender inequality, poverty, illiteracy as well as socio-cultural and economic issues intersect to increase Nigerian women's vulnerability to trafficking for prostitution. According to the Women's Rights in Development (AWID) report on intersectionality,

While all women are in some ways subject to gender discrimination, other factors

including race and skin colour, caste, age, ethnicity, language, ancestry, sexual orientation, religion, socio-economic class, ability, culture, geographic location, and status as a migrant, indigenous person, refugee, internally displaced person, child, or a person living with HIV/AIDS, in a conflict zone or under foreign occupation, combine to determine one's social location. Intersectionality is an analytical tool for studying, understanding and responding to the ways in which gender intersects with other identities and how these intersections contribute to unique experiences of oppression and privilege (2004:1).

Thus, the context underpinning this research is the multiple identities of Nigerian women moved into prostitution in Italy and how this either facilitates or derogate from their agency to consent. The application of structural intersectionality as conceptualised by Crenshaw (1991) as a response to the research question reinforces human migration as a complex issue dependent on identity. In the context of the movement of Nigerian women for prostitution, the issue of difference in identity is problematic because as Crenshaw argues, the experiences of women are frequently shaped by other dimensions such as race, class, immigration status and poverty (1991:p.1243). Applying Crenshaw's structural intersectionality to the research question suggests that the feminist positions outlined above are not mutually exclusive. For example, whilst Steinbugler, Press, & Dias (2006) argue that intersectionality exposes intersecting forms of oppression and the benefits that accrue to non-marginalised statuses, Weber & Parra-Medina (2003:188) argue that an intersectional framework is committed to social justice by recognising social inequality and power relations. In locating the consent of Nigerian women moved into Italy for prostitution, this thesis seeks to expose the different factors that interact to push Nigerian women to migrate. On the other hand, it also seeks to expose the conditions under which women are moved and made to work in Italy, especially the power relations between the women and their recruiters. With respect to the experiences of Nigerian women in Italy, the women are exploited in different ways and the state's efforts to offer protection are fraught by structural complications (Crowhurst, 2006:222) that leave women vulnerable to returning back to the exploiter.

Long, for instance, notes that

...Nigerian girls trafficked to Italy for years were treated as 'whores' because of their

race and origin. The discourse against 'white slavery' itself reflects the inherent class, ethnic and racial discrimination of most anti-trafficking campaigns and has its own historicity... A recent counter-trafficking campaign in Bosnia and Herzegovina also translated trafficking as 'white slavery', although nearby in Italy, more young Nigerians were being trafficked (1991:p.1243).

The framework adopts Crenshaw's (1991:1245-50) structural intersectionality to explore the connections between structural inequality and the experiences of Nigerian women moved into prostitution. Accordingly, the data from Nigeria and Italy gathered during the research for this project, analyses push and pull factors and how these affect the experience and decision-making capacity of Nigerian women moved into prostitution in Italy. Consequently, the next chapter seeks to examine the push and pull factors and other related phenomena that may be easily conflated with trafficking for prostitution.

Chapter Three

Conceptual Issues Associated with the Trafficking of women for Prostitution

3.1. Introduction

The preceding chapter examined how feminists' construction of prostitution especially by the two dominant feminist groups have shaped the discourse on prostitution and trafficking for prostitution. The chapter also examined two other emerging feminists' strands on prostitution in relation to trafficking for prostitution and the framework adopted in this thesis, intersectional feminist framework. Intersectional feminist framework combines feminists' perspectives on trafficking for prostitution and Crenshaw's (1989; 1991) intersectionality to examine the impact of structural inequality and multiple identities borne by women on Nigerian women's choice to migrate for prostitution. Accordingly, Crenshaw's intersectionality is used to examine Nigerian women's multiple statuses and how these statuses promotes or derogates from the women's agency to validly consent to migrate into Italy to work in prostitution. Women's different statuses could be ascribed to different factors, for instance Tiefenbun (2002) identifies the increased securitisation of international borders as a factor that is likely to make potential migrants resort to irregular migration with the concomitant effect in increased human trafficking activities. Increased border policing by destination countries confers the status of race and class on migrant women which increases the vulnerability of such women to exploitation. Thus one of the recent IOM annual reports identifies:

Overly restrictive immigration policies also increase levels of vulnerability by enlarging the pool of migrants in an irregular situation and leaving them inadequately protected and at the mercy of criminal groups and unscrupulous employers. Although migrants are often aware of the inherent risks and dangers of irregular migration, a dearth of viable opportunities at home and the near absence of safe and regular migration channels leave them with little choice (2011:10).

Development agencies like the United Nations Office on Drugs and Crime (UNODC), International Organization for Migration (IOM), International Labour Organisation (ILO), as well as scholars and NGO practitioners have identified different factors as key facilitators of the trafficking of women for prostitution. With respect to origin and

destination countries, IOM (2012) report identifies the most commonly cited push and pull factors as poverty and demand. Poverty is another status and identity borne by most women moved into prostitution. And because most of the factors that are frequently cited as facilitating the movement of women for prostitution are commonly cited with respect to prostitution and illegal migration, trafficking for prostitution is frequently conflated with prostitution and other related phenomena such as human smuggling.

Consequently, this chapter draws from existing literature to analyse the multiple statuses of migrant women as may be determined by economic, social and cultural issues that both facilitates their movement into and sustains them in prostitution. The second part of the chapter examines the differences and similarities between trafficking for prostitution and other related phenomena and how improper delineation of the boundaries of each phenomenon may further complicates the situation of women moved across international borders into prostitution. The chapter demonstrates that whilst there are some characteristic features of the trafficking of women for prostitution that technically sets it apart from other phenomena the nexus between it and prostitution on the one hand and human smuggling on the other hand is so close that it renders the attempt to use consent and exploitation as distinguishing criteria redundant.

Causes of Trafficking for Prostitution

Askola (2007) notes the complexity of the phenomenon of women trafficking for prostitution and posits that in order to understand how genderised the subject is, it is needful to understand the different identities that the affected women are associated with. Thus Askola states that 'it is necessary to explore the background against which trafficking should be examined' (2007:22). In addition to Askola's position, by adopting an intersectional feminist framework, this thesis contends that to effectively locate the place of consent in the movement of women for prostitution it is necessary to examine the different identities that such women bear and how these identities intersect to either facilitate or detract from the exercise of the women's agency to

consent.

Chuang (2006) and Fredette (2009) amongst other scholars identify one of the key supply side (push) factors that facilitate irregular migration as ignorance including ignorance of the illegality of such forms of migration, the associated risks, and the difference between trafficking and smuggling. Following that line of argument, Raviv (2003) notes that the women who are susceptible to being moved into prostitution are mostly recruited from rural areas, poor and without the requisite knowledge of regular forms of migration.

The demand-side (pull) factors include the demand for cheap labour in industrialised economies, the demand for commercial sex and the low risk but high profitability of moving women into prostitution. Tiefenbun (2002) and Kelly (2007:89) argue that the liberalisation of markets over the past three decades has facilitated the growth of the shadow economy which fosters illicit and organised criminal activities such as trafficking for prostitution. Exploring the 'business model' of trafficking for prostitution Tiefenbun (2002) posits that profitability of moving women into prostitution drives human trafficking trade and makes the illicit trade attractive to organised criminal groups and their networks. The profitability of trafficking for prostitution is premised on the assertion that women moved into prostitution unlike other commodities in illicit criminal activities are treated as expendable commodity reusable and resellable (Richard, 2002; Parrot & Cummings, 2006).

One of the impacts of globalisation in contemporary times is the facilitation of the movement of people across international borders into different exploitation conditions fostered by demand (Nagle, 2008). Technological advancement which has facilitated online pornography and cheaper travel as well as the ease of communication boosts the recruitment and movement of women for prostitution across international borders (Todres 2011-2012; Fredette 2009). Aside from globalisation demand for cheap commercial sex is identified as one of the key drivers of women's trafficking for prostitution (Corrigan, 2001-2002; Hughes, 2000, 2005). Thus, Todres points out, 'in the human trafficking context, demand is driven by both the desire for commercial sex

and the desire for cheap goods and services' (2011-2012:61).

Poverty is often cited as the main driver for women's migration. Long (2004) argues that poverty is closely tied to the social construction of gender in certain countries, such as Nigeria, and used to perpetuate gender discrimination against women, in turn making women economically dependent in a male-dominated society. A British Council study in 2012 on gender issues in Nigeria identifies that Nigerian women are more affected by poverty than men. The study finds that majority of the women live in rural areas and work in the agricultural sector, where their labour goes virtually unpaid and where men are five times more likely to own land. Thus the position of scholars like Akor (2011), Okojie (2009) and Aghatise (2004) is that poverty as manifested in illiteracy, unemployment and lack of social infrastructure is a root cause of the trafficking of women for prostitution.

Whilst women from such poor background often migrate in search of a better life, ILO identifies that most of the women have less dependable social networks or income to support their decision to migrate, they are more likely to resort to irregular forms of migration thus they may be susceptible to trafficking. Although Todres (2009) agrees that poverty facilitates trafficking to the extent that it is capable of limiting the choice of alternatives to migration, he contends that it does not necessarily follow that a poor person will be exploited by the recruiters or those who facilitate the migration process.

Aside from poverty and ignorance, there are cultural practices that discriminate against women, for instance the preference for male children. In some cultures in Nigeria the preference for male children, places the onus on girls or young women to bring in money to support the family by migrating for work while the boys go to school (ILO, 2007). The cultural undervaluing of girls also reinforces the decision of some parents to sell their daughters into slavery (Allen, 2007).

Some scholars are of the view that there may be some connection between gender-based violence and the trafficking of women for prostitution (Zimmermann & Watts (2004; Parrot & Cummings, 2006). According to the United States Department of State, violence against women is both culturally and legally acceptable in some

regions of the world (USDOS, 2010). Section 55(1)(d) of the Penal Code of Northern Nigeria for instance permits the husband to beat the wife for purposes of correction provided that it does not result in grievous hurt. Research by Zimmermann & Watts (2004), Zimmermann *et al* (2006) and Farley (2004) suggest that most women trafficked into prostitution have experienced some forms of violence before being moved into prostitution.

Gender-based discriminations that deny women the right to education, forced marriage and harmful widowhood practices amongst others may also facilitate the movement of women into prostitution. Consequently, Kara (2009) argues that gender-based discrimination that marginalises and excludes women from formal work; a patriarchal family structure, racism and poverty all contribute to push women to migrate in search of better alternatives, thus making them vulnerable to recruiters. However such discriminations are not limited to the countries of origin, Crowhurst (2012) for instance posits that the issue of citizenship as a basis to enjoying State benefits including protection from exploitation increases the vulnerability of migrant women prostitutes in Italy.

The role of restrictive immigration rules and policies in increasing the vulnerability of women moved into prostitution remains a contested issue. According to Lee (2007) and Sanghera (2005), the global effort to fight organised crime, especially terrorism, and the mass influx of people from developing economies influenced the introduction of more stringent immigration regime in most western countries. Whilst such a move may be necessary it may be counterproductive in the long run because it is likely to increase the scale of people who resort to irregular migration. Lee (2007) for instance argues that such restrictions have created gendered imbalance in immigration access. It is therefore not strange to hear of cases where women's visa applications requires the permission of their husbands but the same requirement is not applicable to the men. This thesis argues that such practice render potential women migrants vulnerable to illicit channels or offer of migration. Thus Sanghera (2005) posits that restrictive immigration rules not only increase the vulnerability of women to smuggling and/or trafficking, but also makes it difficult for victims to access necessary support,

hence the scale of the problem and extent of women's exploitation when moved into prostitution remain a guesstimate.

The impact of conflict situations and political instability on the movement of women for prostitution is currently under-researched. But there are strong indications that suggest that conflict situations such as currently ongoing in the Middle East may facilitate the trafficking of women and children. The recent spate of violent ethnic and religious activities of Boko Haram, a terrorist organisation in Nigeria where over 200 girls were abducted from Chibok, a community in Borno state, North East of Nigeria buttresses such assertion. Cameron (2008) and Quenivet (2010) acknowledge that there is no verifiable data on the link between conflict and the irregular migration and or the trafficking of women for prostitution, but they postulate that conflict may facilitate the movement of women into different exploitative situations, including prostitution. Human Rights Watch (HRW) and Amnesty International (AI) have advanced evidence that suggests that conflict situations not only increase the vulnerability of women, but that traffickers also prey on women from conflict regions (HRW, 2002; AI, 2004). Limoncelli (2010) arguing from historical perspective on the spread of the trafficking of women for prostitution indicted colonial countries who through colonialism promoted the sexual exploitation of women in their colonies. Limoncelli further implicate the State in the sexual exploitation of women when the author cites the example of 'comfort women' who were recruited and moved into military posts to satisfy the sexual needs of serving soldiers.

3.2. The Relationship between Women Trafficking for Prostitution and other Related Phenomena

Whereas the trafficking of women for prostitution bears some semblance with other related phenomena such as prostitution, human smuggling and labour migration amongst others, it is important to state that they are not necessarily the same. Sometimes it may be difficult to distinguish between trafficking for prostitution and other illicit criminal activities that involve economic migration or the sexual exploitation of migrant women, technically and in the sense of how the law treats them they are not the same. Unfortunately, States' responses to the problem of trafficking for

prostitution sometimes promotes the conflation of women trafficking for prostitution with human smuggling thereby creating the possibility of further victimisation of women who may be actual victims of trafficking. Although there may be areas where these phenomena overlap and the impacts on the affected persons may sometimes be the same, such overlaps are not sufficient to treat them as the same. In acknowledging the complex nature of human trafficking and advocating for the need for an informed understanding of the phenomenon Askola (2007:68) argues for the need to avoid overly simplistic frameworks. This thesis posits that avoiding overly simplistic frameworks will require that trafficking is properly delineated from other related phenomena such as human smuggling, slavery, labour migration, prostitution, transnational organised crime and human rights' violations. Even when that is done the complexity of trafficking suggests that it is a criminal activity that involves key elements of some of these other illicit activities. Whilst the next section attempts to examine the differences and overlaps between trafficking for prostitution and other phenomena the thesis adopts intersectional feminist framework to advance women's lived experiences as the essential focus of trafficking for prostitution.

3.2.1. The Trafficking of Women for Prostitution as Human Smuggling

By way of definition, article 3 of the Protocol against the Smuggling of Migrants by Land, Sea and Air (the Smuggling Protocol) defines human smuggling to mean

... the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident

Human trafficking on the other hand, as defined by Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Trafficking Protocol), is the

... recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude

or the removal of organs

From the foregoing, it will appear that there is a rebuttable presumption of agency with respect to human trafficking cases, but the same may not be the case in human smuggling cases, as that comes into play by operation of law. Accordingly, the Trafficking Protocol does not recognise the capacity of children to consent to migrate and also does not conceive of the possibility of child smuggling, because it is axiomatic that the capacity or agency of a child to enter into a contractual relationship is limited. Accordingly scholars like Agustin (2003) and Sanghera (2005) have argued that anti-migration regimes put in place by States have tended to conflate both phenomena thereby failing to recognise migrant women's agency. Still on the violation of migrant women's agency Agustin (2003) and Doezeema (2001) argue that with such conflation migrant women in prostitution are frequently classed as victims of trafficking instead of been seen as economic migrant who have made a choice make a living from prostitution. Consequently Agustin (2003; 2005) argues that women should enjoy equal rights like their male counterparts to migrate without any form of limitation. Whilst this thesis agrees with the position that women like men should enjoy freedom to migrate, such campaign must first address the economic disparity between both genders that limits women's choice to migrate.

The other presumption raised by the definitions is the issue of exploitation, like the issue of consent, both Protocols seem to assume that exploitation is limited to human trafficking while smuggled people are deemed to be free from exploitation as they are perceived to be involved in an act that is mutually beneficial to them and the smugglers. Such uncompromising attempt to differentiate between human smuggling and human trafficking as this thesis demonstrates may be erroneous and misleading in some cases.

The difficulty that may arise in taking a straightjacketed position on the movement of women for prostitution is that whilst it is possible that some women may be coerced into prostitution, there is also that possibility of some other women who voluntarily migrate to work as prostitutes. In the light of the definition of the Trafficking Protocol, what makes an act trafficking is not that consent may not have been given. Rather, it

is that the consent given is invalidated by other extraneous matters like coercion, force or the threat of physical or psychological violence amongst other acts that may invalidate consent. So that there may be instances where a woman may have voluntarily made the choice to migrate to work in prostitution but such voluntariness may be invalidated by subsequent exploitation. A critical analysis of the elements of the definitions above suggest that agency in trafficking is debatable because whilst it may not be wrong to argue that a woman moved into prostitution may have initially given her consent to migrate, the continued validity of such consent may be questioned when exploitation occur.

Contemporaneously, a technical distinction between trafficking for prostitution and human smuggling is characterised by consent and/or agency, and the presence of exploitation. According to Obokata (2006) and Buckland (2009), human trafficking is limited to situations in which people are deceived, threatened or coerced into exploitative situations, which may include prostitution. Human smuggling, on the other hand, implies that a migrant voluntarily purchases services of a smuggler and consents to being moved across international border. According to McCabe (2008) and Nagle (2008), human smuggling is better understood from the standpoint of a commercial agreement, which is consensual between the smuggler and the person being smuggled, and the relationship is ordinarily believed to terminate when the smuggled person arrives at the agreed destination. Thus, Askola states that 'the underlying idea of using consent to distinguish between human trafficking and human smuggling is that the agency of those 'trafficked' are violated (as they are 'exploited'), while smuggling is simply the arranging of a consensual (and presumably non-exploitative) and facilitated (often irregular) entry of a migrant into a chosen country' (2007:17). According to Buckland (2009), both trafficking and smuggling involve migration for different purposes, and very few movements are likely to occur without the use of force. With respect to exploitation Askola (2007) argues that exploitation is masked in a complex range of coercion and choice.

With respect to human smuggling, consent is deemed to be complete at the outset and this is why a smuggled person is considered to be an accomplice in the act of

human smuggling. Accordingly Aronowitz (2009) is of the view that a smuggled person is considered an offender who violates the territorial integrity of the destination country but a trafficked person is seen as a victim deserving protection.

What makes an act human smuggling is that it involves the illegal crossing of international borders and thus it is transnational in nature, trafficking on the other hand may be both transnational and national (Cameron, 2008; Monzini, 2005). Therefore, in the case of human trafficking there is an identifiable person who is most affected by the act and the crime is against that person. The issue of an identifiable victim in smuggling cases is quite fluid, even though it is the State that is frequently seen as most affected by it.

Theoretically, therefore, it may be easy to argue that trafficking is distinct from human smuggling. But in practice, the distinction might not be so clear. For instance, Shelley (2010) and McCabe (2008) note that what may appear to be a simple commercial agreement or transaction, may transform into exploitation. This is where the difficulty of identifying whether the transnational movement of a person is trafficking or smuggling lies. For example, when a smuggled person upon arrival at the destination country or in the course of transit, faces any form of exploitation at the hands of the smuggler or the smuggler's agents, it is not clear whether that becomes trafficking, or if it is still human smuggling or some other crime. Hathaway (2008) argues that although human smuggling cases may sometimes transform into the abusive situations defined by the Trafficking Protocol,

... this is far from the usual case. To the contrary, most smuggling has historically been a consensual and relatively benign market-based response to the existence of laws that seek artificially to constrain the marriage of surplus labour supply on one side of a border with unmet demand for certain forms of labour on the other side of that border (2008:5).

Kelly (2003), whilst reiterating what she believes to be a 'wrong debate' is of the view that the attempt to make a distinction between human smuggling and trafficking should not be done without taking cognisance of the complexities of both phenomena and the areas they intersect. Thus, with respect to consent and exploitation as

standard of distinguishing between trafficking and human smuggling, Kelly states:

Anyone placing themselves in the hands of smugglers surrenders a degree of control over their fate, and for some the outcome may be being trafficked into sexual exploitation, or forms of forced and bonded labour. Further complexities emerge when, in the case of deceptive recruitment into trafficking, it is clear that women believe that the contract they are making is to be smuggled in order to take up a legitimate employment offer. And looking at the question from the other angle, whilst at lower levels many smugglers are small-scale operators, assisting those who feel they have few options other than to illegally migrate, many are also traffickers, not only exploiting those they transport, but subjecting them to 'dangerous and inhumane' treatment, such as locking them in vehicles and containers without water and food for days on end (2003:139-140).

Hence McCabe (2008) argues that it is important to determine when consent to migrate begins and ends, or whether consent to migrate is sufficient to excuse subsequent exploitation in the destination country. Consequently, O'Connell Davidson & Anderson (2006:22) have described attempts to make a strict distinction between trafficking and smuggling as nothing but a distraction from the broader concept of exploitation and the complex conditions that migrants are faced with in destination countries. According to Nicola (2007), the literature stresses the distinctive features of each act, but do not address areas where the trafficking of women for prostitution and human smuggling intersect and the consequences of such overlaps on the affected people. Thus Crowhurst (2012) in her exploration of the Italian practice identifies the double construction of migrant women prostitutes as victims and as illegal migrants.

Aside from the challenges of using consent as criteria to distinguish between trafficking and smuggling, to use exploitation as a standard is even more problematic. This is because the perpetrators of such exploitation may range from the trafficker/smuggler to complete strangers in the destination country. It is doubtful if exploitation that is not directly linked with the smuggler or somebody who intentionally exploits the vulnerability of the smuggled person is capable of making the exploitation of a migrant in the destination country trafficking. Obokata (2006) posits that the general practice is to consider a person who employs the services of another to migrate to another country a smuggled person or illegal immigrant, as the case may

be, even when they are exploited. The general practice according to Nagle (2008-2009) is that exploitation is frequently downplayed in favour of State sovereignty as the violation of immigration laws are emphasised above migrant rights. Thus, Aronowitz (2009), Gallagher (2001:1001) and McCabe (2008) identify that exploitation may be common to both trafficking and smuggling because issues such as debt bondage are likely to occur in both cases. Debt bondage, according to the 1956 Supplementary Slavery Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery,

the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined (Article 1(a)).

If human smuggling is indeed to be taken as a commercial venture, it presupposes that the person to be smuggled may be required to pay for the smuggler's services upfront. But as earlier suggested that poverty pushes people to migrate in search of better life, thus most potential migrants may be unable to afford to pay the cost of migration upfront making them vulnerable to burdensome agreements with wealthy smugglers. Migration in that context leaves the smuggled person with no alternative but to enter into debt contract to pay back the money at the destination country. Where this happens, it becomes debt bondage and the smuggler may choose to enforce such agreement through coercion in so doing moving it into the threshold of trafficking.

Both the trafficking of women for prostitution and human smuggling are highly profitable illicit criminal activities (Bravo, 2007; UNODC (2006). As mentioned elsewhere, the trafficking of women for prostitution is driven by its profitability and this is what makes it attractive to organised criminal groups. Whereas the profit from human smuggling is derived from circumventing immigration rules and the policies of destination countries the profit from trafficking for prostitution is derived from the exploitation of the sexuality of the women moved and such exploitation is usually of a continuing nature. The profitability of both trafficking for prostitution and human

smuggling are driven by demand in the destination countries, thus Aghatise (2004) and Ekberg (2004) posit that it is more difficult to combat trafficking in an environment where prostitution is legalised.

On the gender dimension of both phenomena, although there is no verifiable data on human trafficking generally available data suggests that the number is growing and that women are most affected by trafficking for prostitution. As chapter two demonstrates whilst feminists commonly agree that trafficking is a violation of human rights they are not in agreement on the connection between trafficking for prostitution and prostitution. According to Askola (2007), there are gender-based assumptions that tend to represent human trafficking, especially for prostitution, as disproportionately affecting women, while human smuggling is seen as mostly affecting men. For instance, it is assumed that the Trafficking Protocol is a protective shield for the 'stereotypical woman', who is weak and less economically empowered to facilitate her movement into another country (O'Connell Davidson & Anderson, 2006). Conversely, with respect to men, the assumption, as pointed out by Gallagher (2001), is that men are more financially empowered to be able to purchase the services of a smuggler to facilitate their movement into another country. The ILO, however, argues that these assumptions are superficial and may not hold in reality (ILO, 2008) but Turner & Kelly are of the view that the gender dimension of trafficking is needful:

Whilst this potentially problematizes complex issues of agency and victimhood, particularly along the continuum of migration, smuggling and trafficking, the focus on gender is generally to be welcomed (2009:p.189).

3.2.2. The Trafficking of Women for Prostitution as a Transnational Organised Crime

According to Shelly (2007) and Gallagher (2010) the Trafficking Protocol conceives of human trafficking from a criminal law perspective. Thus some scholars posit that the law enforcement approach of the Trafficking Protocol is influenced the link between the Trafficking Protocol and the Convention on Organized Crime. Accordingly to Ollus (2008), Chuang (2006) and Todres (2012) ascribe the law enforcement approach of the Trafficking Protocol on the influence of the organised crime convention. What

makes an act transnational organised crime and how does it connect with women trafficking for prostitution? Natarajan (2011) identifies that transnational organised crime is a crime that is committed in more than one State with a substantial part of its preparation occurring in another State. The commission of which involves organised criminal groups and although committed in one State it has significant effects in another State.

Similarly by article 3(2) of the United Nations Convention against Transnational Organized Crime (UNTOC), a serious crime is transnational when it:

is committed in more than one State; is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; is committed in one State but has substantial effects in another State.

And according to the UNODC (2006) transnational organised crime is:

one of the major threats to human security, impeding the social, economic, political and cultural development of societies worldwide. It is a multi-faceted phenomenon and has manifested itself in different activities, among others, drug trafficking, trafficking in human beings; trafficking in firearms; smuggling of migrants; money laundering.

Although the trafficking of women for prostitution may occur within the borders of a country this thesis is particularly focused on the transnational movement of women from one country to another. According to Sanghera (2005:6-7) and Truong (2003:55-57) one of the effects of globalisation is the increased manifestation of transnational criminal activities in the area of trafficking for prostitution. Whilst human trafficking is commonly identified as an aspect of transnational organised crime, the latter cannot strictly be treated as human trafficking. Whilst organised criminal groups are often cited as the main perpetrators of trafficking for prostitution the extent of their involvement in the movement of women for prostitution is not clear. Whereas both phenomena are not new the connection between the two only became prominent in contemporary times. Current thinking emphasises the nexus between both activities especially, such that trafficking for prostitution is considered to be a highly lucrative

criminal activity that makes it an 'investment portfolio' for organised criminal groups.

The UNODC (2006; 2009) suggests that recruiters may belong to organised criminal organisations which use trafficking as a means of maximising profit. The European Commission (2009) identifies that human trafficking especially the trafficking of women for prostitution is closely connected to organised crime and is seen as the second means of illicit profits for organised criminal groups. With respect to the profit goal of organised criminal groups Bertone (2004) and Monzini (2005) argue that the profitability of trafficking for prostitution makes it an attractive trade to organised criminal groups. The profitability of trafficking for prostitution is also made possible because it is a trade that can be carried on with other illicit crimes. Thus Aradau (2008) associates the trafficking of women for prostitution with other criminal activities such as drug trafficking and money-laundering.

Whilst the involvement of organised criminal group in the trafficking of women for prostitution is not in doubt it is not clear whether the illicit trade is exclusively operated by organised criminal groups. Organised criminal groups have been linked with the transnational movement of people for different exploitative purposes (Salt, 2000). Salt (2000:43) identifies that the connection between the two phenomena is strong because trafficking is a complex crime that requires the organisational skills of a criminal group or network. To determine whether the perpetrators of trafficking can be safely classed as organised criminal groups it is needful to understand the nature of organised crime groups. Article 2(a) of the UNTOC defines an organised criminal group as

a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.

Thus Salt & Hogarth (2000:53) state that organised criminal groups are organisations that are of a stable and continuing nature. Bertone identifies three types of organised criminal groups involved in the movement of women for prostitution. These are large-scale networks, with political and financial links to facilitate their activities in

different countries; medium-sized networks focused on the movement of women for prostitution and small networks that may just be involved in moving one person at a time (Bertone, 2000). Shelley in her business model approach to trafficking for prostitution is of the view that trafficking is a highly organised trade combining both traditional and new actors. Shelley therefore identifies “six different models of business operating in the trafficking area. Each of these models is an ideal type associated with a different national group and reflects deep historical influences, geographical realities, and the market forces that drive the trade” (2003:123-7). Skeldon (2000), for instance, claimed that in some regions of Asia, individuals and small informal groups, not necessarily organised criminal groups, are the principal actors in trafficking in that region. In the case of Nigeria, however, the earlier works of Carling (2006), Prina (2003) and Ume-Ezeoke (2004) suggest that organised criminal groups are involved in the movement of Nigerian women for prostitution in Italy. Shelley (2003:127) also identifies that the organised criminal groups operating in Nigeria are very effective because they ‘combine the best of both modern and older worlds by allying sophisticated forms of modern technology to tribal customs’ such as the *juju* oath (Shelley, 2003). Shelley also notes that ‘Nigerian organized crime groups that traffic women are multi-faceted crime groups, in which the trade in women is only one part of their criminal activities’ (2003:127). Similarly Kara (2009) notes that in Europe, and especially in Italy, the sex trade is operated by organised criminal groups, including Nigerian organised criminal groups.

Other scholars caution against restricting the mechanics of trafficking for prostitution to organised criminal groups. Kempadoo (2005) and Segrave & Milivojevic (2009:..20) argue that over-emphasising the role of organised crime, is a ploy by the U.S and other developed world countries to justify expanded militarisation and regulation of the movement of people over borders. Todres (2009), on the other hand, argues that the relationship between the Trafficking Protocol and the Principal Convention tends to restrict attention to organised criminal gangs as the only perpetrators of trafficking, deflecting attention from actors beyond transnational organised crime. So that whilst the Trafficking Protocol supplements the provisions of the Convention on Transnational Organised Crime on trafficking issues some of the provisions of the

Convention where the situation permits are also applicable to the Trafficking Protocol. Perhaps a positive aspect of the law enforcement approach on human trafficking is that it achieved what has proved difficult under previous anti-trafficking regimes (Gallagher, 2010). Shelley (2007) in agreement with foregoing describes the approach as highly significant as it defines the problem from a broader perspective of transnational organised crime. Consequently, States are urged to criminalise human trafficking so as to facilitate the prosecution of traffickers, thereby acknowledging the significance of criminal law and an enforcement regime in effectively dealing with the problem.

However, Ollus (2008) and Gallagher (2010) argue that the limitation of this approach is its insensitivity to the victims of trafficking who are often treated as accomplices, especially when States tend to confuse smuggling with trafficking, resulting in the treatment of trafficked persons as criminals. Consequently, efforts at combating trafficking using this approach are described as not victim-centered because the prosecution of traffickers is given a higher priority while victims are deemed as only necessary for prosecutorial purposes either as witnesses or informants (Gallagher & Holmes, 2008; Gallagher, 2010). The easy conflation of trafficking and human smuggling as well as the determination of Western countries to control immigration further exacerbates the improper identification and treatment of trafficked persons. Thus Askola (2001) argues that the fact that a person may be a victim of exploitation, an illegal immigrant and a witness in a trafficking proceeding all at the same time poses a challenge to the criminal justice sector.

As to whether international criminal law can effectively address the gendered nature of trafficking for prostitution, some feminists doubt the effectiveness of the law in protecting women against violence such as suffered by women trafficked for prostitution. Smart for instance is of the view that "Law is so deaf to the core concerns of feminism that feminists should be extremely cautious of how and whether they resort to law" (1989:2). Snider (1994) questioned the extent to which law can be used to redress the harm suffered by women. Feminists like MacKinnon (1994; 2011) have raised concerns on the double standard nature of the law especially the subjectivity

and patriarchal nature of international law. According to Charlesworth *et al* (2000) the framework of international law rests on dichotomization between the public and the private spheres which is largely constructed along gender lines. Thus the conception of public/private dichotomy in both domestic and international law has significant impact on the analysis of human rights violations that women moved into prostitution are likely to experience.

In addition to the foregoing States in the name of protecting their sovereignty often refuse or neglect to identify trafficked victims as such in order to avoid the necessary human rights' obligations. This according to Gallagher (2001:976-7) is exacerbated by the fact that States are at liberty to adopt the approach that best suits their interest to categorise migrants and how they are treated in within their jurisdiction. The lack of uniform definition of trafficking and how to best to address the issue of prostitution at the national level further takes the actual victims of trafficking for prostitution from the realm of legal. And because States have the choice of what treaty they may accede to and the extent to which they are bound by such treaties, States are able to limit their obligations to protect. But in spite of the above challenges, Cole (2005) has suggested that the trafficking of women for prostitution be conceptualised as an aspect of crime against humanity, thus bringing trafficking under international criminal law. Kittichaisaree (2001) notes that international criminal law is still evolving and may not yet be competent to tackle all international crimes, particularly as the development of international criminal law is often hampered by state sovereignty.

Whilst international criminal law may be evolving, the jurisprudence of the International Criminal Tribunals, like those of the former Yugoslavia (ICTY) and Rwanda (ICTR), and more recently the International Criminal Court (ICC) on the role of consent in sexual offences committed during conflict situations is insightful. According to Mantovani (2003), the foundation of criminal law is that consent will only exclude culpability where the legal interest solely lies with the victim, in which case the victim's rights of agency has an overriding interest. But if the prohibited act is also meant to protect the collective interest of a people, agency or consent cannot be effectively exercised to exonerate criminal responsibility.

Overall prosecuting the crime of trafficking as a transnational crime may be problematic and enforcement may even be more complicated. For instance, while trafficking cases can be prosecuted in the destination country where the exploitation occurred, relevant evidence may be located in the country of origin. Although mutual assistance channels may operate between countries to speedily attend to issues of co-operation, they may also be slow and inefficient. The issue of prosecution is further compounded with the possibility of the defendant or suspected trafficker being outside the jurisdiction of the country seeking to prosecute the case.

3.2.3. The Trafficking of Women for Prostitution as Slavery

The link between slavery and the transnational movement of women for prostitution can be traced to the earliest international attempt to combat the trafficking of women for prostitution. Although this earlier connection is contested amongst feminist scholars the earliest international agreements to address the trafficking of women for prostitution identified it as a form of slavery. Scholars are also divided on the matter, Scarpa (2008) and Bales (2005) for instance views trafficking for prostitution as a manifestation of modern day slavery. Whilst Gallagher (2010) referred to such claim as expansionist idea Hathaway (2008) argues that such a claim amounts to undue privileging of a small subset of people who may be in one exploitative labour or the other. Although chattel slavery may no longer exist in the world of today, different forms of exploitation are still being perpetrated in contemporary society through institutions that are closely connected with slavery such as debt bondage, forced prostitution and the exploitation of the prostitution of others (Smith, 2012: 248-9). Women trafficking for prostitution may not strictly be slavery but it may be difficult to deny that some of the manifestations of trafficking for prostitution bear some semblance with slavery.

The 1926 Slavery Convention defined slavery as the ‘the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised’ (article 1(1)). Similar prohibitions are found in subsequent human rights’ documents, such as the UDHR and ICCPR, amongst others. Taking the above definition alone as applicable to trafficked persons may amount to an expansionist

agenda (Gallagher, 2009). However, when the definition of the 1926 Slavery Convention as incorporated into the 1956 Supplementary Convention on Slavery, is taken together, it may then be argued that the scope of slavery as comprising institutions and practices similar to slavery can be extended to cover trafficking. Examples of such institutions and practices include debt bondage and serfdom, among others. In addition to the earlier definition of debt bondage as an institution of slavery, article 6 of the 1956 Supplementary Convention went on to criminalise enslavement and the procurement of others into slavery-like conditions.

In its 1978 report the UN Working Group on Contemporary Forms of Slavery raised concerns on the incidences of sex exploitation and by its recommendations in 1998, identified the transnational movement of women and children for prostitution as a form of contemporary slavery calling on States to take actions to protect women and children in that respect. The foregoing is reinforced by the Judgment on the Common Indictment and the Application for Restitution and Reparation of the Military Tribunal which clearly states that powers attaching to a right of ownership would include exercising sexual control over another person, and considered the exercise of such a right as a deprivation of personal autonomy. Also, the Statute of the ICTY - article 5(c) - and the Statute of the ICTR- article 3(c) - also criminalised enslavement. The ICTY Trial Chamber in *Prosecutor v Kunarac* addressed the issue of enslavement and defined an enslaved person as one

Over whom any or all of the powers attaching to the right of ownership are exercised.' The Appeal Chamber viewed enslavement in a broader sense than the traditional meaning of slavery: 'Under this definition, indications of enslavement include elements of control and ownership; the restriction or control of an individual's autonomy, freedom of choice or freedom of movement; and, often, the accruing of some gain to the perpetrator.

This thesis notes that in the decisions of these International Tribunals on issues of forced prostitution consent is not an issue as it is rendered impossible by the presence of consent-nullifying elements such as control and ownership, restriction or control of an individual's autonomy, freedom of choice or freedom of movement, including psychological oppression or socio-economic conditions and even the gains

made by the perpetrator. This thesis contends that women moved into prostitution also bear these traits and posit that the only difference is that in the latter case women are frequently recruited during peace times. Some of these phrases and words are elaborated upon in subsequent chapters in order to answer the research question.

Under the jurisprudence of the ICTY, the buying and selling of a person is not a necessary requirement for enslavement, but it may be a relevant fact to be considered to establish enslavement. The Rome Statute also used the word enslavement and defined it to include trafficking in women and children. The ICC Element of Crimes, in defining enslavement as part of crimes against humanity, defined it as the exercise of 'any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons or by imposing on them a similar deprivation of liberty'. Under footnote 18 of the ICC Elements of Crimes, enslavement is defined to include human trafficking, especially the trafficking of women and children. Consequently, the Elements of Crimes of the Rome Statute also identified that trafficking is slavery. And for the purposes of determining sexual slavery it will suffice if deprivation of liberty of a person is effected to cause the person or persons to do one or more sexual acts.

Some judicial decisions in recent times have also tended to affirm the close link between slavery and trafficking. For instance in 2005, the European Court of Human Rights (ECtHR) in *Siliadin v. France*, a case involving the exploitation of a Togolese girl who was held as an unpaid domestic worker in France, held that the conditions that the girl was subjected to amounted to a human rights violation. But the Court did not think that the violations amounted to slavery on the basis of 'a genuine right of legal ownership' over the girl. The ECtHR stated that the exercise of 'ownership' is necessary in slavery and declared that violence and even the lack of freedom without the exercise of ownership are insufficient to constitute slavery. However, the ECtHR, in a more recent decision, *Rantsev v. Cyprus*, activated the slavery provision in Article 4 of the ECHR to determine that trafficking came under the slavery provisions

of the convention. The Court also held that article 4 of the ECHR gives rise to a positive obligation on a State to protect victims. Equally, in the Australian case of *R v Tang*, the Court stated that the difference between slavery and exploitative conditions 'may be found in the nature and extent of the powers exercised over a complainant'. The Court also affirmed the position that the objectification of a person involves the exercise of control.

In that case, Ms Tang was accused of having purchased five women from Thailand to work under debt bondage in a legal brothel in Australia. The women were aware of the nature of the work they were going to do, having previously worked as sex workers in Thailand. The women arrived in Australia separately between 2002 and 2003 on fraudulently procured tourist visas. To repay the debt owed to Ms Tang, the women were made to work in a brothel six days a week over a period of 7-8 months. Ms Tang also held the women's travel documents with which they had gained entry into Australia. There was no indication of physical abuse, but the Court of first instance found Ms Tang liable for being in possession of slaves contrary to section 270 (1)(a) of the Australian Criminal Code and accordingly convicted her to 10 years' imprisonment. The judgment was upheld on appeal to the High Court of Australia.

Contextually, the prohibition of slavery and trafficking has a number of commonalities. In the first place, slavery, like trafficking, consists of the act, the means, and the purpose. Secondly, the 1926 Convention and Trafficking Protocol impute intention on the slave trader and the trafficker respectively. Thus, slave dealing and trafficking are not accidental acts but are contemporaneous with the 'act' element of slavery and trafficking. Thirdly, while the purpose of slavery is to reduce a person to the status of a slave, over whom a right of ownership is exercisable, the purpose of trafficking is exploitation which is also targeted at objectifying the trafficked person. Thus both the Slavery Convention and the Trafficking Protocol prohibit slavery or practices similar to slavery.

Thus, Rassam has argued that modern-day slavery consists of deprivation which denies trafficked women juridical personality and objectifies their sexuality, through

the use of psychological coercion (Rassam, 2005; Smith, 2012). But Rassam views the definition of slavery under the 1926 convention as overly narrow and therefore advocates that 'when viewed outside the narrow framework of legal ownership, the institution of slavery is defined as the total dominion over another through physical and/or psychological violence, for the purposes of extracting unpaid labour' (2005:817). Rassam (2005) is of the view that slavery in contemporary times should be conceptualised to include debt bondage and bonded labour. Scarpa notes the key difference between the transatlantic slave trade and the contemporary slavery thus: 'there are some differences between slavery of the past centuries and the new slavery-like practices of our time, insofar as the latter ones are characterised by very low purchase costs, very high profits for the exploiter, surplus of potential slaves and irrelevance of ethnic differences' (2008:5).

Bales treats both human trafficking and slavery as being synonymous and claims that there are about 27 million 'slaves' in the world today (Bales, 1999: 8; 2005). What makes Bales' position problematic is that it tends to conflate all forms of exploitation with slavery. Allain (2008:232) in his critic of Bales conflation of the slavery practice with human trafficking notes that "If one is interested in the issue of modern day slavery and its suppression, Bales is the person to turn to. For the law, look elsewhere." Challenging this conflation, Gallagher (2009:796-7) argues that the concept of slavery remains highly contested under international law. On another occasion, Gallagher and Allain describe Bales' position as raising the 'political and emotional significance of the slavery label' (2009:798), challenging Bales's (2005) position as an expansionist definition of slavery. Gallagher, further argues that 'to identify a practice as slavery does more than raise the political and emotional ante...it also brings a very special kind of legal force to bear...' (2009:798). Bravo in what she referred to as 'Emotion Exhortation to Action' states that,

Transatlantic slavery is used as an emotional and historic touchstone—the blueprint against which this “new” traffic is measured. The more immediate access to visceral imagery and emotions that this touchstone evokes, the more the new system of exploitation is said to resemble the transatlantic slave trade. As a result, the analogy user's call to action becomes more powerful, and the audience is more likely to support the mechanisms suggested by the analogy user in their crusade against the

modern traffic (2011:562-3).

Hathaway argues that the global attention that human trafficking currently enjoys is unjustifiable when the author refers to such attention as the 'unjustifiable privileging' of a small subset of people subject to contemporary forms of slavery (2008:7).

3.2.4. The Trafficking of Women for Prostitution as a Human Rights' Violation

Although the Trafficking Protocol is not a human rights' treaty, Fitzpatrick (2002-2003) notes that the Trafficking Protocol incorporates human rights' principles as it seeks to protect the rights of trafficked persons. Konrad (2006) identifies that women moved into prostitution are often vulnerable and at risk of cruel and exploitative conditions while in transit and in the destination countries, especially at the hands of their recruiters (Obokata, 2006:21). Thus Lee (2011) and Obokata (2006) are of the view that the human rights approach to trafficking offers a theoretical framework to understand the debate on the movement of women for prostitution, especially in the context of the exploitation that the women suffer. Arguing further the authors are of the view that a human rights' framework offers a tool for analysing the causes and effects of trafficking, as well as developing effective responses to the problem. Bruch (2004:30) posits that the human rights' principles of equality and non-discrimination are also applicable to victims of trafficking. The case of *Rantsev v. Cyprus and Russia* clearly illustrates that the violations of some fundamental rights are associated with the trafficking of women for prostitution.

Different harms are commonly associated with the trafficking of women for prostitution, and according to Askola (2007) the difficulty that arises in dealing with the abuses suffered by women moved into prostitution is that, technically, human rights' violations are often perceived as violations for which the State or any State agency or official is complicit. From the perspective of Jeffrey's (1997) construction of the State as a pimp coupled with the actions or inactions of States and their agencies in facilitating the movement of women for prostitution, it may not be wrong to exonerate the State as an accomplice. MacKinnon (2011) in addition to the foregoing accuses international law of adopting different standards to conceptualise violence under torture and violence suffered in prostitution. And according to

Charlesworth & Chinkin (2000) in advancing the maleness of international law argues that public international law has been an exclusive domain for men. Thus the authors posit that women's sufferings are deemed to be issues of private concern rather than a matter of public interest. Whilst this thesis recognises the imperfections of public international law, it agrees with Obokata that the limitations of international human rights law can be compensated by international criminal law. Although the Trafficking Protocol may not be a direct product of a human rights regime, the human rights approach has greatly influenced the development of hard and soft law especially in providing the minimum standards for victim protection problem (Cole, 2005; Zalewski, 2005-2006; Gallagher, 2010).

3.2.5. The Trafficking of Women for Prostitution as a Form of Labour Migration

The increased border policing resulting in the adoption of strict immigration policies especially by most western countries may give rise to the easy conflation of migration and the trafficking of women for prostitution. The implication of such practices tends to ignore the incidences of trafficking as well as the possibility that people may be forced to migrate just to survive. Musacchio (2004) for instance links the close connection between migration and the trafficking of women for prostitution as one of the darkest features of inequality between men and women. Whilst feminists' debate is more concerned with whether prostitution can be an employable contract, the most contestable issue is locating the voluntariness of the women to migrate and work as prostitute.

To briefly restate the main points of contention regarding intra-feminist debate over prostitution. To the radical feminists, the processes and outcomes of exploiting women through trafficking for prostitution and the relationship between pimps and women in prostitution are one and the same. Thus, any attempt to distinguish between voluntary and forced prostitution is illogical. According to Ekberg '...any society that claims to defend the principles of legal, political, economic, and social equality for women and girls must reject the idea that women and children, mostly girls, are commodities that can be bought, sold, and sexually exploited by men' (2004:1187-89). Therefore radical feminism interprets prostitution and trafficking for prostitution as forms of violence against women.

The liberal feminists do not agree that all forms of prostitution are intrinsically exploitative (Doezema, 1998, 2000, 2002, 2010; Kempadoo, 1998, 2005; Limoncelli, 2009). Voluntary prostitution is distinct from forced prostitution, and can be a form of labour which a woman can exercise her right of self-determination to engage in. Liberal feminism argues that a woman should be free to use her body in order to earn a wage, hence voluntary prostitution should be defined as sex work and not criminalised.

3.3. Conclusion

This chapter undertook a review of key literature on human trafficking; the trafficking of women for prostitution thereby highlighting the economic, social and cultural practices that facilitates the movement of women into prostitution. The chapter notes that the literature commonly class these factors as push and pull factors with poverty and demand as the key factors.

One of the highlights of this chapter is that the manifestations of contemporary form of trafficking for prostitution makes it possible to conflate it with other illicit criminal activities such as human smuggling and transnational organised crime. Whilst the thesis notes that not all cases of trafficking are perpetrated by organised criminal groups, the systematic way in which most of the women are recruited and moved across international borders into prostitution suggest the involvement of organised criminal groups. The chapter also notes that the lucrativeness of trafficking for prostitution provide organised criminal groups with the platform for them to raise the profit margin and illicit operation of organised crime in other sectors such as drug trafficking.

In examining the complex nature of trafficking for prostitution the chapter attempts to differentiate trafficking for prostitution from similar phenomena accentuating the areas where they overlap and the effects of such overlap on counter measures. One of the conclusions that can be drawn from the chapter is that both the Trafficking Protocol and the Smuggling Protocol do not offer any precise method of dealing with the areas of overlaps between the two phenomena. Whereas there is evidence to suggest that human smuggling may in some cases transform into a human trafficking case, the

use of concepts such as consent and exploitation to differentiate trafficking from human smuggling only muddles up the issues the more. The difficulty of using consent and exploitation to distinguish between human trafficking and human smuggling is further complicated by the feminists' debate as to whether prostitution can be conceptualised as sex work or violence against women. The chapter notes that, using consent and exploitation as landmarks to draw a distinction between trafficking and other migratory transnational criminal activity like human smuggling may be problematic, and in some cases may complicate the issue of identification. To effectively understand the complexity of consent and exploitation in the context of women trafficking for prostitution, the next chapter undertakes a detailed analysis of the concept of consent under international human trafficking law.

Chapter Four

Baseline Mapping of Consent under International Human Trafficking Law

4.1. Introduction

From the analysis in the previous chapter, there are indications to suggest that 'human trafficking' as a terminology may be new but scholars agree that what it applies to, the objectification human beings, is nothing new (Coontz & Griebel; 2004, Gallagher, 2010). The modern objectification of human beings is what Amiel describes as 'a complex, multifaceted problem that closely intertwines with other issues such as prostitution, border control, gender, crime, security and human rights' (2006:5). One aspect of human trafficking that has remained constant through its existence is the objectification of persons trafficked; objectification still remains the central purposes of trafficking. Thus scholars identify objectification and commodification of women and their sexuality as the core motive of moving women into prostitution (Ray, 2006; Fredette, 2009; Mattar, 2012).

Whilst people are moved across international borders for a wide variety of exploitative purposes, Mattar (2012) notes that some forms of trafficking are more prevalent in some regions and countries of the world than others. Organ trafficking is prevalent in Egypt, whilst in Syria it is forced prostitution. In the West African sub region, Aghatise (2004), Okojie (2009) and Akor (2011) identify the trafficking of women for prostitution is the most prevalent form of trafficking. But the trafficking of women for prostitution has generally remained an international phenomenon identified by scholars like Mattar (2006; 2012); Limoncelli (2010) and Cianciarulo (2008) as a criminal activity that has remained impervious to criminal justice and law enforcement measures. The inadequacy of efforts to address the problem may probably be responsible for the ever increasing number of people moved across international borders for different exploitative purposes (ILO, 2012).

The earliest international response to the problem grew more out of the early anti-prostitution movement which was focused on the trafficking of white women and

girls for prostitution or sexual exploitation (Bruch, 2004:2). The failure of the earliest international treaties to address the problem is commonly blamed on the narrow conception of the problem which had racial and gender undertones (Ray, 2006; Bruch, 2004). Accordingly, scholars like Mattar (2012), Fredette (2009), Obokata (2006) and Hyland (2001) tie the failure of those treaties to the narrow construction of trafficking.

But the current legal framework on human trafficking, the Trafficking Protocol adopted in 2000 has been described as marking a significant progress in counter trafficking measures (Todres, 2011-2012). In spite of this, Fredette (2009) portrays human trafficking as a criminal activity that has remained 'indelible' and notes that the current effort is still inadequate to address the problem. Bruch contends that "the current approaches to human trafficking replicate many of the flaws of earlier approaches namely, a focus on victimization, a fruitless cycle of debate on the role of prostitution, problematic definitional questions, and a process of decision making that excludes critical voices" (2004: 3).

Part of the inadequacy of the Trafficking Protocol is that the core elements of the offence of trafficking are either not defined or vaguely defined thereby rendering the construction of some key terms subject of controversy. One of such element that has become the source of debate within feminists both before and after the adoption of the Trafficking Protocol is the issue of consent in relation to women and prostitution. Over a decade after the adoption of the Trafficking Protocol, the debate on the role of consent in the movement of women for prostitution is far from resolved, thus, Todres argues that there is a need to assess the level of 'progress made and identify gaps and shortcomings in the global response to human trafficking' (2011-2012: 56).

To effectively carry out such an assessment will require a critical analysis of the historical development of international human trafficking law, and in the context of this research the issue of consent as presented in the Trafficking Protocol is examined in the context of women's trafficking for prostitution. The chapter will map the emergence of the concept of consent in anti-trafficking measures and its implications

as it has evolved in international human trafficking law. Providing an overview of the international legal response to human trafficking, the chapter highlights the changing role of consent in the different anti-trafficking regimes and how its current construction has crystallised under the Trafficking Protocol. Finally the chapter analyses the core elements of trafficking as a criminal activity with special focus on the role of consent.

4.2. Consent under International Human Trafficking Law

In this section, consent in relation to the movement of women for prostitution under international human trafficking law prior to the Trafficking Protocol will be examined in two phases: the earliest period under the League of Nations, and the 1949 era. The earliest approach to the problem took the form of multilateral agreements mostly between European States. According to Bruch (2004) this implies that the anti-trafficking effort at the time was limited to States that were parties to the agreements. The first international response to address the trafficking of women for prostitution was the International Agreement for the Suppression of the White Slave Traffic signed in Paris in 1904. The focus at the time was the trafficking of white women for prostitution which at the time was perceived as immoral (Long, 2004; Bruch, 2004; Limoncelli, 2010). The Agreement not only conceptualised trafficking as a prostitution related problem, it conceives the problem with racial and gender undertones as it was more concerned with the movement of white women and girls for prostitution (Mattar, 2006; Bruch, 2004). The Agreement did not define the word 'traffic' but the traffic featured in the title and the preamble captured the desire of the contracting parties thus,

Securing to women of full age who have suffered abuse or compulsion, as also to women and girls under age, effective protection against the criminal traffic known as the 'White Slave Traffic'

The Agreement did not use the word 'consent' in relation to the trafficking of women for prostitution rather it used the word 'compulsion' which can be interpreted to mean force or coercion. It was not just that consent was not an issue at the time, the age of the women was also irrelevant to the crime of trafficking. Instead, the 1904 Convention adopted criteria that made the exploitation of women in prostitution the principal concern, thereby making protection dependent on exploitation. To ensure

the protection of women exploited in prostitution article 1 of the 1904 Convention urged contracting parties to establish bureaux to facilitate the exchange of information on the movement of women for prostitution. To that effect, article 3 required that States establish aid at ports and railway stations for women who may have been trafficked into prostitution. Along that line States were also expected to make provision for the repatriation of victims, amongst other things.

The second international response was the International Convention for the Suppression of the White Slave Traffic (1910). Articles 1 and 2 of that convention state:

Whoever, in order to gratify the passions of another person, has procured, enticed, or led away, even with her consent, a woman or girl under age, for immoral purposes, shall be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries.

Whoever, in order to gratify the passions of another person, has, by fraud, or by means of violence, threats, abuse of authority, or any other method of compulsion, procured, enticed, or led away a woman or girl over age, for immoral purposes, shall also be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries.

In its definition of what could be classed as trafficking in contemporary time, the Convention lists what may be referred to as recruitment methods. Long (2004) identifies that the scope of the 1910 Convention, unlike its predecessor was expanded to include trafficking within national borders. The word 'consent' in relation to the trafficking of women for prostitution was first used in the 1910 Convention, but to establish the offence of trafficking the Convention made the requirement of consent irrelevant. Both Articles may appear repetitive, but a critical analysis of both suggests that they refer to different scenarios. In the first instance, consent is of little importance in the movement of women for immoral purposes. Trafficking is deemed to have been committed where there is a procurement, enticement, or leading away, even with the consent of the victim, for the purposes of exploitation. In the latter case, trafficking will still be deemed to have been committed even when it is perpetrated through the use of fraud, violence, threats, abuse of authority, or any other method of compulsion. So that in the latter instance 'the means' is used not only in connection

with immoral purposes but also over the method of procurement. Under the 1910 Convention the purpose must be to gratify the passions of another person. Whilst the phrase 'to gratify the passions of another person' is not explained it may be safe in line with the objects of the Convention to interpret it to mean the prostitution of another. Nevertheless it still does not clarify whether that other person has to be the recruiter or a third party. According to Long (2004), Bruch (2004) and Bravo (2007; 2011), the effectiveness of this convention and its predecessor was undermined by racial undertones because of its focus on white women.

The third international response was the International Convention for the Suppression of Traffic in Women and Children, adopted in 1921. The Convention was based on the recommendations of the International Conference convened by the Council of the League of Nations in 1921 and was contained in the Final Act. Raviv (2003) and Gallagher (2010) identify that the 1921 Convention provided extended protection to all persons, Gallagher (2011) notes that the convention was of general application as it adopted a gender-neutral position and also covered women of full age who were constrained or coerced.

The last international instrument adopted under the regime of the League of Nations was the International Convention for the Suppression of the Traffic in Women of Full Age of 1933. Under this new instrument, consent was also not an issue where there is a procuring, enticing or leading away of a woman or a girl of full age across international borders for prostitution. As with the 1910 convention, consent was deemed applicable to both the method of procurement as well as to the purpose of the procurement.

The emphasis on race and prostitution in these different agreements is criticised by Doezema (2000; 2005) who describes the idea of the 'White Slave Trade' as a myth, arguing that the term was used to elicit sympathy for the plight of prostitutes as victims, leading to the adoption of international and national legal remedies that sanctioned sex workers, instead of addressing the abusive condition of women moved into prostitution.

The 1949 phase was largely dominated by the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, which was a product of a new dispensation, the United Nations. But the 1949 Convention consolidated previous international instruments on trafficking and with respect to prostitution, the Convention declared prostitution as incompatible with the dignity of the human person (Defeis, 2004). The key feature of the 1949 Convention was that like its predecessor it made the trafficking of women for purposes of prostitution punishable even where the victim may have consented to being moved. Thus, it required the punishment of any person who, 'to gratify the passions of another, procures, entices or leads away, for purposes of prostitution, another person, even with consent of that person.'

With respect to victim protection, article 17 of the Convention's urged States to make necessary regulations for the protection of immigrants or emigrants, especially women and children. States were required to take appropriate measures to ensure supervision of railway stations, airports, seaports and other public places, in order to prevent the international traffic in persons for the purpose of prostitution. The 1949 Convention remained the last word on women-trafficking issues for a long time as there was no notable activity on the subject until the 1970s (Bruch, 2004; Todres, 2009; Long, 2004:20).

Scholars commonly criticised the 1949 Convention for its failure to distinguish between voluntary and forced prostitution as well as its undue focus on the criminality of prostitution to the detriment of victims (Bruch, 2004:11; Ray, 2006; Mattar, 2006). Bruch also notes that the enforcement mechanism for the 1949 Convention was weak and argues that States lacked the political will to address the problem. However, Mattar (2006:362-3) notes that the 1949 Convention greatly influenced subsequent anti-trafficking movement and policies.

Long (2004:20) and Bruch (2004:6) attribute the re-emergence of trafficking issues at the international level to the strength of the women's movement. During this time, the trafficking of women for prostitution was conceptualised as a form of gender-based

violence, or 'an abuse of women's physical and psychological well-being, as well as an exploitation of their social and economic powerlessness' (Ray, 2006: 912).

The idea of trafficking for prostitution as a form of gender-based violence became more prevalent in the 1970s and 1980s as feminist groups organised against different forms of gender based discriminations that women suffer (Long, 2004:19-21). The women's movement influenced the stance taken by the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), whose article 6 clearly proscribes trafficking for prostitution and conceived of women moved into prostitution as victims. But Ray (2006:913) argues that such position promotes a false distinction between deception and consent. Fredette considers CEDAW's position:

Perhaps a more subtle and dangerous problem with the CEDAW approach is that by over-emphasizing the powerlessness of trafficked women, it glosses over elements of agency which women exhibit in their own trafficking (2009:111).

It is contradictory to assume that women who are trafficked could still exercise agency because the very idea of trafficking flags off a situation where a person's agency is either diminished or invalidated due to a number of factors the presence of which do not promote informed decision making. Further, trafficking being a criminal act, the presence of women's agency, no matter how infinitesimal implicates that the crime is a victimless crime and the women involved may as well be accomplices in the act thus making the crime synonymous to human smuggling. Consequently if the idea that trafficked women could still exercise agency is anything to go by, this thesis contends that such a position will only serve to diminish the criminal responsibility of the trafficker. This will in turn frustrate any attempt at dealing with the criminality associated with trafficking, thereby making the existence of the Trafficking Protocol redundant. Accordingly, it is important to state that agency cannot be used to neutralise the criminality of trafficking.

But concrete efforts leading to the adoption of the Trafficking Protocol according to Ray (2006) started in 1998 when the United Nations took the initial step to address concerns over human trafficking. This was not unconnected with the Informal Note by the United Nations High Commissioner for Human Rights' Ad Hoc Commission on the

Elaboration of a Convention against Transnational Organized Crime which identified the previous anti-trafficking regimes as inadequate to address the contemporary form of human trafficking. Accordingly the contemporary anti-trafficking regime as earlier mentioned has strong ties with the international effort on organised crime but the Trafficking Protocol also received inspiration from other quarters like the human rights' activities of development agencies, non-governmental organisations and the women's movement. Thus Long (2004:21) notes that the period preceding the adoption of the Trafficking Protocol set the stage for a proliferation of different interest groups on trafficking for prostitution. According to Long (2004) both nongovernmental organisations and international agencies attempted to create domains for themselves, some based on interest in the status of prostitution and some others were more concerned about the role of cross-border migration. This also influenced the areas of intervention pursued by the different interest groups. For instance, the IOM focused on supporting women to return to their country of origin; the UNHCR tried to define trafficking from an asylum and refugee perspective; the ILO focused on the labour aspect of trafficking and the OHCHR focused on the human rights' dimension of trafficking. States were not left out of this debate. Amongst Western countries, whilst the United States officially advocated for the proscription of prostitution during and after the debate, Europe was, and has remained, divided on the matter. For instance Sweden, Norway and Iceland criminalised prostitution on the ground that prostitution is inherently exploitative and thus cannot be a voluntary act of the women involved. On the other hand, the Netherlands and Germany permits a difference between voluntary and forced prostitution, but nonetheless criminalised the trafficking of women for prostitution.

According to Doezenia (2005; 2010) and Gallagher (2010) the negotiations leading to the adoption of the Trafficking Protocol had strong feminists presence whose efforts was split into two as they were deeply divided on the issue of prostitution. Whilst one group saw prostitution as a legitimate form of work, the other saw prostitution as a form of violence against women. Aside from the feminist concerns on prostitution, there was also the need to respond to security concerns because of the involvement of organised criminal groups in irregular migration (Jolly, 2011).

4.3. Definitional Problems of the Trafficking Protocol

And after what Gallagher (2009:791) referred to as the 'fractious debate', came the adoption of the current international legal framework, the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000). In attempting to respond to all the emerging issues associated with trafficking, the Trafficking Protocol defines human trafficking as:

(a) 'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used (Article 3).

Although Gallagher (2009:791) views this definition of trafficking 'to be sufficiently broad to embrace all but a very small range of situations in which individuals are severely exploited for private profit' the definition is generally commended especially for bringing about a paradigm shift from the traditional approach of law enforcement to a holistic response incorporating prevention and protection (Ditmore, 2005; Sanghera, 2005; Fredette, 2009). According to Gallagher and Holmes (2008), the definition signalled the emergence of an international legal consensus on the nature of the 'trafficking problem.' Hence Gallagher (2010) and Konrad (2008) argue that the Trafficking Protocol provides a universally acceptable definition of what constitutes trafficking. Therefore McCabe (2008) and Munro (2006) note that the Trafficking Protocol brought remarkable progress and a new impetus to the fight against human trafficking.

Whilst it is acknowledged that human trafficking has received significant attention since the adoption of the Trafficking Protocol, Fredette (2009) and Nagle (2008) have

argued that such attention has not translated into the desired result of diminishing the prevalence of trafficking. The reason for this is blamed on different factors; some of which are foundational. For instance, Todres (2011-2012) and Gallagher (2008; 2010) have argued that the Trafficking Protocol, being a product of an anti-crime regime, is unduly focused on the criminality of trafficking, to the neglect of other important issues such as prevention and victim protection. Rao (2004) and Cole (2005) blame the inadequacies of the Trafficking Protocol on the general weaknesses of international law, especially with respect to its enforcement mechanisms. HRW (2010) also blames the failings of the Trafficking Protocol on the failure or refusal of States to comply with human rights' treaties.

Todres (2011-2012:55) posits that the central failing of the Trafficking Protocol occurred at the design stage. Bruch (2004), on the other hand, blames the fundamental flaw of the Trafficking Protocol on the challenge of implementation, especially in that it ignores the role of States or the complicity of State officials in trafficking. Bruch argues that the Trafficking Protocol does not contemplate holding States accountable for trafficking issues, thereby attaching less importance to those human rights' dimensions of trafficking which are left to the discretion of States. In that respect MacKinnon (2011) has accused international law of being double standard on issues of violence that affects women. Bruch (2004) also notes that it is problematic to identify victims of trafficking because of the overlaps between human trafficking and human smuggling. Thus, there is potential for denying actual victims legal protection.

Whilst the above criticisms are valid, this thesis contends that the central failing of the Trafficking Protocol is the ambiguous nature and the role of consent in the trafficking process. The complex nature of consent especially in relation to the movement of women for prostitution is well advanced by MacKinnon when she posits that,

they usually 'consent' to the acts only in the degraded and demented sense of the word (common also to the law of rape) in which a person who despairs at stopping what is happening, sees no escape, has no real alternative, was often sexually abused ... hopeless, is often trying to avoid being beaten or killed, is almost always economically desperate, acquiesces in being sexually abused for payment, even if, in

most instances, it is payment to someone else. Many are children; most enter the industry as children (2004-2005).

Whereas MacKinnon's position may be true in some cases that may only seem to represent one side of the feminists' debate on prostitution which may not necessarily be true in all cases especially when the liberal feminists' position of the possibility of women's voluntary migration for prostitution is taken into consideration (Agustin, 2008).

The complexity of consent in relation to the trafficking of women for prostitution is particularly relevant to the issue of victim identification, because as Maclean (2010) notes the attempt of the law to classify abuses based on the domain in which they are suffered, determines the remedial law to be applied. Consent is therefore used as a criteria to determine the domain in which exploitation occur in to also locate the applicable law. The attempt to use consent to classify women's experiences in order to determine whether it is a matter for State intervention or a private matter has been described as an affirmation of the double standard nature of the law (MacKinnon, 2011). Other scholars have also argued that the private/public dichotomy makes State sovereignty a higher priority and ignores the choices available to women, which are fundamentally reduced in the private sphere (Bravo, 2007: 227; Charlesworth & Chinkin, 2000) not just by reason of the structural inequalities in the countries of origin but also by socio-political situations in the destination countries.

4.4. The Crime of Human Trafficking: Constituent Elements

The influence of the crime fighting approach of the Trafficking Protocol according to scholars (Gallagher, 2001; 2010; Gallagher & Holmes, 2008; Long; 2004; Bruch 2004) is not unconnected with the proscription posture of the Trafficking Protocol. Thus, the Trafficking Protocol made criminalisation, and by extension prosecution, a higher priority than other objectives of the Trafficking Protocol such as prevention and protection. Accordingly this section considers trafficking and its constituent elements from a criminal perspective. The elements of the crime of human trafficking in the light of the provisions of article 3(a) are commonly divided into three: the act, the means and the purpose (Gallagher, 2010; UNODC, 2009).

Going by the definition in article 3 of the Trafficking Protocol as well as the UNODC and Gallagher's (2010) classifications, the first part of the criminal elements of trafficking involves the movement element and this can be discerned from the text of article 3 of the Trafficking Protocol: 'recruitment, transportation, transfer, harbouring or receipt of persons'. The second is what Gallagher (2010) refers to as the 'consent-nullifying elements' or the 'means element', that is the methods by which the movement is achieved: 'the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits' (Gallagher, 2010; UNODC, 2009). And because a crime must necessarily have a mental element on the part of the perpetrator except for cases of strict liability offences, the UNODC (2009) identifies the intention of the trafficker as the mental element. This affirms the position of article 5(a) of the Trafficking Protocol which calls for the criminalisation of the conduct set forth under article 3 'when committed intentionally.' Indeed the recognition of recruitment as the starting point of the chain of events leading to a trafficking act presupposes that the suspected traffickers calculatingly set out to recruit the victim, which implicates the intention of the suspected trafficker to traffic. Consequently the last element of the crime is the *raison d'être* for which people are coercively moved: "the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs". Whilst the contemporary forms of human trafficking include a wide range of criminal activities such as sexual exploitation, the prostitution of others, labour exploitation, domestic servitude amongst other forms of exploitation, this thesis is mainly focused on one of such end purpose, prostitution.

One of the innovations of the Trafficking Protocol is that it is reasonably comprehensive in some respect, for instance the act element can be interpreted to implicate different people who may have been involved in the recruitment and movement of the women for prostitution. It is not impossible that the person who recruited or procured a potential victim of trafficking may be different from the transporter, including commercial carriers or the persons who concealed or harboured the traffickers and or the trafficked persons whether in transit or at the

destination point. The provisions of article 3 with respect to the act element may therefore be interpreted to criminalise the act of all the different persons who may be involved in the trafficking process such as the commercial carriers, brothel owner, pimps or businesses and households which employ the services of trafficked persons and the men who buy sex from trafficked women (Gallagher, 2010).

In England and Wales, for instance, the buying of sex from a forced prostitute is a crime, even when the buyer is not aware of the coerced circumstance of the woman (s.53A of the Sexual Offences Act 2003). A key lesson to be borrowed from s. 53A of the English Sexual Offences Act 2003 is that ignorance of a trafficked person's circumstance cannot be a valid defence for anyone who participates in their movement and/or exploitation. This will also imply that the commission of one of these acts will satisfy the requirement of the act element. Consequently, each of the movement elements can stand alone, so that instances where different people are involved in the different aspects of the act element, they will each be liable for the crime of trafficking. Where a person's role in the whole trafficking exercise is limited simply harbouring a trafficked person, according to Gallagher (2010) that will suffice as the commission of the act element of human trafficking. The interesting aspect of this line of argument is that in jurisdictions like Nigeria, as will be seen in Chapter six, parents who facilitate the recruitment and movement of their children or wards into exploitative conditions may be criminally culpable as traffickers.

The second element is the means element which refers to the method used by the trafficker to achieve the movement of the persons to be trafficked. The means element has always been a key aspect of previous anti-trafficking regimes except that, previously the consent of the trafficked person was deemed to be irrelevant. Whilst the Trafficking Protocol retained the means element, it is only irrelevant where the movement and exploitation involves children. But with respect to the recruitment of adult persons under the Trafficking Protocol consent only becomes irrelevant where any of the means elements such as force and coercion have been used. The challenge therefore is how to establish the consent or lack of consent of the women recruited. Unfortunately, the indications provided by the Trafficking Protocol to

establish consent or lack of consent is not comprehensive and the few mentioned are drafted using vague and largely undefined word, thus providing the space for subjective interpretations. Drawing on existing literature, the next section will attempt to disaggregate the key concepts of the definition particularly words or phrases that will deepen the understanding of the role of consent.

4.4.1. The Means Elements

The means elements according to article 3(a) of the Trafficking Protocol is when people are recruited into exploitative situations 'by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person'. A combination of any of these methods may be used by traffickers but the list is not exhaustive, indeed there are emerging methods that are not directly covered by the provisions of article 3. As will be seen in chapter six one of the peculiarities of the recruitment pattern used to recruit Nigerian women into prostitution is the use of the *juju* (voodoo or black magic) oath or ritual.

What then is the exact meaning of the words drafted to indicate the means elements? For instance what could count as threat and force in human trafficking? With respect to threat, is the use of gun pointed to woman's head threat or is can the threat of harm directed at a family member suffice? Or is the successful recruitment and movement of the women a clear indication of consent or that threat and force have not been used? Proving force is complicated in trafficking cases because trafficked women who are forcibly recruited are more likely to remain in the trafficker's custody for a fairly long period and within which period it becomes more and more difficult to prove force. The discussion on the psychosocial effect of trafficking in chapter 8 best demonstrates this position. Whilst not downplaying the effect of physical force, this thesis contends that the requirement of force in the trafficking of women for prostitution should not be interpreted in all cases to mean physical violence. The threat of harm may also be interpreted as force because the use of threat makes the victim to do something against their will.

Perhaps the requirement of threat and force may be easily visible in cases where the victims were abducted but establishing threat and force in majority of cases involving the movement of women into prostitution where most women are frequently recruited by someone they are familiar with becomes burdensome. This thesis therefore contends that the requirement of threat and force as consent nullifying elements are similar to what McGregor (2005) referred to as the legacy of patriarchy and a violation of women's sexual autonomy under rape law. The inclusion of the requirement of force in the definition of trafficking it is submitted is a re-enactment of the patriarchal element in rape law from which some jurisdictions are progressively departing.

Coercion, deception and fraud are broad words that are usually used to suggest that a particular act of an individual is not borne out of free will and is either induced by compulsion or the person is made to believe in a state of affairs that is not true or partially true. Hoffman (1998) defines coercion as 'pressure' that makes people act in a way they ordinarily would have avoided. In the context of trafficking for prostitution Dworkin's (1988) interpretation of coercion can be used to mean that trafficked women would not have willingly agreed to be moved from her ordinary place of residence to another but for the deception, coercion or fraudulent acts of another. According to Kim,

Theories of coercion exist across multiple disciplines to explicate the ability of one actor, the coercer, to diminish the free will of another, the coercee, in the absence of overt physical force. Sociologists speak of power dependence relationships that exert coercive pressure upon the dependent actor to succumb to the wishes of a more powerful actor. Psychologists refer to 'mind control' as coercively persuading individuals to succumb to the bidding of another. Philosophers and legal theorists recognize that in contrast to direct physical force that can literally cause another to involuntarily act or not act, coercion often involves the manipulation of a coercee's alternatives to achieve his or her compliance (2011:411-2).

Wilkinson (3003:84) identifies coercion as the product of threat or intimidation, and Dworkin argues that coercion disregards an individual's personal autonomy.

Spelling out the conditions of procedural independence involves distinguishing those ways of influencing people's reflective and critical faculties which subvert them from those which promote and improve them. It involves distinguishing those influences such as hypnotic suggestion, manipulation, coercive persuasion, subliminal influence,

and so forth, and doing so in a non ad hoc fashion (1988:18).

Whilst Wilkinson differs from Dworkin on whether the inability to reflectively endorse an act constitutes coercion, he advances the two schools of thought on coercion; the normative and the descriptive coercion. The difference between the two is that one holds that the assertion of coercion is based on moral judgments and the other holds that such claims are value-free (Wilkinson, 2003:85-6).

In the context of the research question and as mentioned elsewhere in this work, if women desire to migrate due to the social, economic and cultural issues in the countries of origin, can they assert coercion when they accept the offer to migrate to a country where they are made to believe their situation will be better? According to Wertheimer (1989:209), such offers will be coercive where it involves any form of threat to the women. Whilst such offers may not be coercive on the face of it but the question is, are the women aware of risks and benefits associated with accepting such offers? And even when such offers are made, are the women aware of all relevant facts associated with the migration and the nature of work they are being recruited for? So that the concealment of any material fact that may help the women make informed decision could be classed as deception or fraud, the presence of this will also serve to diminish the freewill of the women. Thus, Wilkinson (2003:94-5) states that a proposal may be an offer on the face of it and yet be coercive in reality. Wilkinson, therefore, posits that such an offer should inform the person to whom the offer is made of the benefits in accepting the offer and the harms of accepting the offer. To determine whether a proposal is coercive or harmful, according to Wilkinson:

by comparing what is proposed or done to what ought to be proposed or done, in other cases such assessments have to be carried out using other comparators, such as the way things were ['pre-interaction'], or the way things would have been if things had been relevantly different ('relevant possible world'), or the way we could reasonably expect to be ['predictive expectation'] (2003:94-5).

Kim (2011) argues that coercion could take different forms - fear of violence, detention or psychological oppression such as the use of the *juju* oath ritual on Nigerian women moved into prostitution (Aghatise, 2004). Detailed discussion of this can be found in chapter 6. Therefore it may not be wrong to view the recruitment of a

woman fleeing a conflict situation, domestic violence, and even harsh economic and developmental issues as victim of coercion. This is because such conditions have the likelihood of making women vulnerable to trafficking (Anderson, 1990; Chamallas, 1987-88; Malone, 2001). Thus in *Akayesu's* case [*Prosecutor v. Akayesu*:688] the Chamber states that "coercive circumstances need not be evidenced by a show of physical force" but "may be inherent in certain circumstances," such as armed conflict or the military presence of threatening forces on an ethnic basis.

Coercion can also be broadly interpreted to cover debt bondage which involves financing the movement of the women to the destination country where they are made to work to pay back the debt under onerous conditions (Twitty, 2003-2004). This may not be unconnected with the situation from which the women are recruited where the women are not only unable to finance the migration pact (Kelly, 2003) and may also be unable to negotiate or question the migration proposal with the recruiter either due to ignorance or fear. Thus MacKinnon (2011) argues that the life conditions that make a woman sell sex for survival constitute a form of coercion. Accordingly, contrary to Sanghera (2005), who maintains that coercion may only become apparent in the destination country; it is contended that at that point the harm has been done. Secondly that position ignores the implication of emphasising coercion for prosecutorial purposes which may then require that the woman alleging bears the burden of proving coercion.

As to when coercion becomes relevant in the trafficking process sufficient to be identified as a consent nullifying element, the IOM describes coercion as the main element of the process which could start at any stage. Coercion could be applied by subtly instilling fear in the victims that they must make the trip to Italy and this may be a continuing practice to make the women believe that even in Italy they cannot run away or that if they do, they will not be helped or risk being arrested. It may also be present in overt actions such as cases where the victims' travel documents are seized from the women in the destination country or where a woman's movement is restricted (Touzenis, 2010). The English case of *R v Massey* suggests that emotional blackmail that pushes a woman into prostitution, or where a person is lured by the

offer of a better life, can be classed as coercion. The cost of coercion is enormous; the ILO in 2009 for instance put the monetary cost of coercion of forced labour at US\$ 21 billion, excluding that of victims of sexual exploitation (ILO, 2009). The legal implication of coercion is that it 'serves to nullify or mitigate one's legal or moral responsibility for one's actions' (Weitheimer, 1989:xi) which in the context of this thesis can be interpreted to mean that, the choice of migration to work in prostitution was made for and not by the women.

From Wilkinson's (2003) analysis of coercion, a non-coercive proposal may yet be deceptive or fraudulent; so that a woman may not be coerced, but the proposal upon which she agreed to migrate may be deceptive. Deception in that sense will mean that the benefits contained in such a proposal may be wholly false or partly false and the person to whom the proposal is offered to may not be aware of the deception until it has occurred. Deception could relate to any aspect of the trafficking chain, from the mode of transportation in the country of origin to the destination country at the start of the journey or in the destination country, even to the nature of work. Thus, Amiel (2006) notes that traffickers characteristically coerce or lure victims from the protection of their homes and communities, sometimes with the offer of false promises of better economic and educational opportunities, marriage or abduction, as the case may be. Whereas Cameron & Newman (2008) and Kara (2009) contend that traffickers may operate under the guise of legitimate employment agencies and make false promises to lure women into exploitative situations, Human Rights Watch (HRW) argues that a failure to fully inform a potential migrant of the conditions of work in the destination country constitute trafficking (HRW, 2008).

But what makes the issue of deception and fraud unquestionable in the movement of women for prostitution is that many traffickers prey on the economic vulnerabilities of the women and their families. And with many of the women being young and inexperienced, it becomes easy for recruiters to lure them away with false promises and dreams of jobs such as working as models, or offers of school placement in a prestigious university (Jones, Engstorm, & Hilliard, 2007). A HRW report of 2010 on the trafficking of Nigerian women for prostitution describes the situation: 'These

women and girls were sold dreams of migrating to better their lives, but then found themselves in a personal hell'. A typical case of deception, as reported by the HRW, states:

I came here six years ago with five girls from Delta State. The woman who brought us told me that she sold wrappers (fabric used as a skirt) in Cote d'Ivoire. I thought it was a good opportunity for me to learn a business, so I left Nigeria and went with her. The second day after we arrived, she handed us each a condom and I thought, what is this? She said, 'This is what you are going to do'. What could I do? I had nobody backing me ... so I did it (HRW, 2010)

But Doezenia (2005) has argued that women seeking to migrate are not so easily 'deceived' as people are made to believe, rather she argues that the women are often aware that the jobs they are signing up for are in the sex industry. Whilst it may be conceded that some women may have foreknowledge of the nature of the work they have consented to, the flaw in that in Doezenia's argument is that the women may not have sufficient information to enable them take informed decision before accepting the offer to migrate or make informed judgment about conditions in transit or the destination countries. And as some have argued the women are often not told about the perilous condition under which they will be transported, or the fact that if they change their mind in the future they will need to purchase their freedom, or the possibility of being auctioned and sold like commodities to third parties (Nelson, 2001-2002; Andrijasevic, 2010; HRW, 2008:43).

As to what level of deception or coercion is required to establish the offence of trafficking, whilst the level of deception and false representation may vary from person to person, this thesis contends that with respect to movement of women for prostitution the degree of deception should not be an issue to determine criminality. Andrijasevic (2007) points out that deception and its use with other terms such as force, coercion and exploitation as essential components of the concept of trafficking, oversimplifies the issue and makes for a faulty distinction between forced and voluntary migration. This is particularly so because deception and exploitation may also occur in voluntary migration and employment. Consequently Askola notes that,

Most typically, a person can initially consent to being assisted to migrate irregularly (or

even to being smuggled), but become instead 'trafficked' if upon arrival to the country of destination debt bondage, threats, or violence are used to coerce this person into forced labour, for example, in sweatshop work or in prostitution (2007:207).

4.4.2. Abuse of the 'Position of Vulnerability'

The Trafficking Protocol does not explicitly define the phrase 'position of vulnerability'. Jordan (2002) and Gallagher (2010) note that the exact meaning of the phrase was contested during the negotiation preceding the adoption of the Trafficking Protocol. Thus the authors point out that the only available guidance as to the meaning of the phrase can be found in the *travaux préparatoires*. According to Gallagher (2010) drafters noted that abuse of position of vulnerability: *"should be understood to include the power that male family members might have over female family members in some legal systems and the power that parents might have over their children."* The reality of such power is reflected in some cultures in Nigeria where the preference for a male child means that female child is treated less favourably and where gender-based discriminations frequently go unaddressed.

According to the EU Trafficking Directive 2011/36/EU, abuse of a position of vulnerability may also be '... understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved'. The process of trafficking suggests numerous scenarios and junctures where such abuse is likely to occur. Thus issues of vulnerability in the context of trafficking are likely to run through all the stages of the trafficking process. Thus it can be interpreted to cover structural issues such as poverty that make women susceptible to being trafficked (ILO & EC, 2009). The ILO defines abuse of a position of vulnerability to include a language or communication barrier as well as the exercise of control by the trafficker over the victims (ILO, 2009). Abuse of a position of vulnerability can also cover instances or situations where the victim is unable to make informed choices, and even social isolation experienced by victims in destination countries (UNDOC, 2009c). Abuse of a position of vulnerability may also include those who take advantage of fears and uncertainties over an individual's immigration status (Parrot & Cummings, 2008).

This follows that abuse of position of vulnerability may be applicable to the conditions

that push women to migrate as well as those conditions that keep most migrant women trapped in exploitative conditions in the destination countries. It is submitted that abuse of a position of vulnerability could involve recruiters who prey on the desperation of the women recruited into prostitution, as well as the receivers in the destination country, including the men who buy sex from trafficked women. The scope of the phrase is sufficiently wide to cover individuals or groups of persons who may not be directly involved in the act of trafficking but who nevertheless, benefit from the trafficking process. An example is the case of corrupt police or immigration officers who are bribed not to arrest or prosecute traffickers. An expansionist interpretation of the phrase is such that it can be interpreted to cover a wide range of issues that may interfere with the personal autonomy of a person and this will vary depending on the location of the women under consideration per time. It is therefore needful to interpret the phrase in a context specific manner so as to full utilize the potentials of the provisions of the Trafficking Protocol to the benefit of vulnerable women. Wholistic use of the provisions of the Trafficking Protocol can be used to address issues related to the abuse of position of vulnerability such as poverty and other structural issues that discriminates against women that makes them susceptible to be trafficked. Thus article 9(4) of the Trafficking Protocol requires States to take positive steps to tackle the causative factors of trafficking: “take or strengthen measures ... to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.”

Having dealt with the physical elements, it is necessary to briefly examine the mental element of trafficking. Article 5(1) of the Protocol states that ‘each State party shall adopt such legislative and other measures as may be necessary, to establish as criminal offences, the conduct set forth in article 3 of this Protocol, when committed intentionally.’ The intent on the part of the trafficker is the purpose for which women were recruited, thus it is important to note that the Trafficking Protocol considers the intention of the trafficker relevant to the offence of trafficking. How then is the intention of the trafficker established? Touzenis (2010:27) notes that the intention of the trafficker is important but argues that it may be difficult to ascertain the true intent

of the trafficker except where it is manifestly demonstrated through demonstrable exploitation. Whilst this thesis agrees that intention of the trafficker may be difficult to ascertain until it is manifested through exploitation, it is submitted that the danger in such cases is that it leaves intervention too late and where may sometimes mean that a trafficker can go uncaught. Such a position also negates the idea of prosecuting attempt to traffic.

In the light of the provisions of article 5(2)(a) of the Trafficking Protocol, it is arguable that the Protocol allows the imputation of criminal intent on the part of a recruiter, especially as article 5 provides for the criminalisation of *attempt* to trafficking, so that even when exploitation is yet to occur a person may yet be prosecuted for trafficking. Thus, according to the UNODC, the offence of human trafficking is a crime of special intent or *dolus specialis*.

Dolus specialis is defined as ‘the purpose aimed at by the perpetrator when committing the material acts of the offence. It is the purpose that matters, not the practical result attained by the perpetrator. Thus, the fulfilment of the *dolus specialis* element does not require that the aim be actually achieved. In other words, the ‘acts’ and ‘means’ of the perpetrator must *aim* to exploit the victim. It is not therefore necessary that the perpetrator actually exploits the victim (UNODC, 2009b).

Adopting this position will mean that the trafficker will bear the burden of proof, rather than the victim having to prove lack of consent. It would also remove the possibility of pleading the defence of ignorance of the victim’s situation on the part of others involved in the trafficking chain, such as those who received or harboured the victims. Indeed such interpretation will serve to meet the preventive purposes of the Trafficking Protocol. It also has the potential to uncover the threats and dangers that women moved into prostitution are confronted with, and, of particular relevance to this study, it can shed light on whether the women have exercised authentic agency or not.

4.4.3. The Purpose Element: Exploitation

Exploitation is central to the third element of the definition of trafficking under the Trafficking Protocol, the purpose element. The Trafficking Protocol did not define the word ‘exploitation’ but offers some guidance: ‘exploitation shall include, at a minimum,

the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs'. Whilst the Trafficking Protocol retains prostitution as one of the outcomes of trafficking, it adopts 'exploitation' as a generic term to cover the end purpose of trafficking. The term exploitation can be interpreted to cover the movement of people other exploitative acts not directly mentioned in the Trafficking Protocol such as begging, sexual grooming of children and forced marriage.

To understand exploitation, this section adopts a theoretical approach to highlight the relevance of consent to both the movement and the purpose element of trafficking. Defining exploitation is problematic and 'disputes over what constitutes exploitation are rife in social, political and moral theory, as are debates over its normative import once established' (Munro, 2008:83). Sample conceives of exploitation as a moral judgment: 'our ordinary and general understanding of exploitation always proceeds from a moral point of view...those who make judgments of exploitation are thereby judging that it is wrong' (2003). However, the moral dimension to exploitation differs from case to case and simply referring to a practice as exploitative fails to promote an understanding of the nature of the word. A working definition is the unfair use of a woman's sexuality for the benefit of another in a way that harms the woman. Whether such exploitation and the resultant harm should be the subject of criminal prosecution or otherwise is the focus of chapters five and six.

Exploitation according to Wilkinson (2003:9-12) and Munro (2008:83-85) can be used both in the technical or normative sense, as well as in the economic or criminal sense. Whereas economic exploitation such as where an employer underpays the employees is may be straight forward, when the word exploitation is used in the normative sense, ascertaining the meaning of exploitation becomes problematic, dealing with more subjective scenarios where advantage accrues to one person to the detriment of another (Arneson, 1992). According to Pimentel (2003) exploitation can be used synonymously to mean unfairness. This is not far from Wertheimer's (1996:10) earliest work on exploitation which can be reduced to a scenario where 'A exploits B when A takes unfair advantage of B'. Unfairness according to Wertheimer

(1996) is measured in the context of the distributional benefits that accrue to the parties to a particular transaction and only when a person suffers 'special' undue disadvantage does exploitation occur. Whilst not all cases of unfair treatment of another qualify explicitly as exploitation, the difficulty with Wertheimer's position is that it ignores the structural context of the parties. According to Sample, recruiters who take advantage of the fundamental injustices of vulnerable women to move them into prostitution are, *prima facie*, guilty of exploitation (2003:165). Further, Sample argues that for a person to be exploited he/she must be in a vulnerable position (2003:54). In addition to abuse of a person's vulnerability, Sample (2003) connects exploitation with the idea of a relationship that is degrading. Noting that the idea of degradation is subjective and may be variously interpreted, the author contends that 'if a person is in a weaker bargaining position because of past injustice, we stand to gain disproportionately in virtue of that injustice' (2003:82).

Hill (1994) also argues that exploitation need not involve coercion but rather vulnerability might stem from a psychological motive: 'for an offer to be exploitative, it must serve to create or to take advantage of the offeree's ability to reason effectively' (1994:637). This is closely connected with Sample's (2003) idea of abuse of vulnerability, except that Hill argues that 'a mere passing desire is not sufficient' and 'differences in life choice, even those resulting from limited alternatives, do not inevitably imply vulnerability' (1994:637). Whilst it is indeed correct that limited alternatives may not necessarily imply that exploitation has occurred, but in relation to the earlier discussion on the abuse of position of vulnerability, it is important to stress the point that when a vulnerable person's position is abused, exploitation is inevitable.

In the context of Nigerian women, whilst most Nigerian women may be susceptible to being recruited for prostitution because of poverty or ignorance and other structural factors that may render them vulnerability to being trafficked, that does not imply that as many Nigerian women as are thus vulnerable are exploited. It also follows that a migrant woman in a foreign country may be susceptible to exploitation due to a number of factors such as irregularity of residence status or even language barrier

but that does not automatically imply that they are victims of exploitation until somebody actually exploits such vulnerabilities to his/her advantage. This is highly relevant in the case of Nigerian women moved into Italy for prostitution, where their vulnerabilities prior and after migration may be both cause and effect of exploitation. With respect to prostitution Wilkinson argues that the wrongful objectification of women outweighs economic or physical coercion,

Most street prostitution is believed to be exploitative in the 'disparity of value' sense for reasons which include that the women involved don't receive, or don't keep, enough money. But many people also argue that, even if there were no problems with underpayment, etc, prostitution would still be exploitative in that it involves the wrongful use of women (or others) as sex objects (2003:14).

Kara (2009) and Raymond (2001) seek to disaggregate the 'movement' of women for prostitution from the 'exploitation' of women in prostitution, maintaining that the movement is only part of the process and needs to be seen in the context of the exploitative conditions that the women experience.

Accordingly if trafficking is not just contingent on movement, is exploitation alone sufficient to constitute trafficking? Scholars such as Kara and Raymond, as well as international actors such as the UNODC put exploitation at the heart of the trafficking process. The US Department of State in one of its annual human trafficking report states that 'once a person's work is recruited or compelled by the use or threat of physical violence or the abuse or threatened abuse of the legal process, the person's previous consent or effort to obtain employment with the trafficker becomes irrelevant' (USDOS, 2009). It follows that subsequent exploitation is deemed to nullify the initial consent as it is commonly agreed that a rational person will not consent to exploitation. An interesting comparison is the definition put forward by the notes on article 143 (1) of the Republic of Georgia Criminal Code which defines exploitation as the 'use of a human being for the purpose of forced labour, involvement into criminal or other anti-social activity or prostitution, sexual exploitation or other kind of service, placing into contemporary forms of slavery or for the purpose of transplantation or other use of human organ, part of organ or human tissue'.

But for exploitation to transform an act into trafficking it must take place in the context

of the movement or transportation of an individual. It does not now matter whether such migration is consensual or coerced. Thus the possibility that consensual migration can transform into trafficking because of exploitation complicates the distinction between human trafficking and human smuggling. The intersections between human trafficking and human smuggling and the inadequacy of both Protocols to address the areas of overlap not only complicates the issue of consent and exploitation, but exposes actual victims of trafficking to more precarious situations (Long, 2004:22). McCabe (2008) and Bruch (2004) identify such intersections as problematic; Bruch for instance cites such intersections as an indication of the complex nature of trafficking.

As to the degree of exploitation required for trafficking to occur, Askola (2007) notes that exploitation in trafficking varies in degree and from person to person. According to Touzenis, 'the degree of victimization and exploitation of trafficking victims may vary, but fundamentally they are all victimised and exploited – or there would be no case or talk of trafficking.' (2010). Is it, therefore, possible to consent to exploitation? Touzenis argues that 'many people who are trafficked are actively seeking a migration route, but they do not choose to be exploited' (2010:35). Thus, if a woman consents to migrate to work as a prostitute in a particular city and at a particular brothel for a specified amount, if the recruiter intended to keep the woman in coerced sex work, 'then there is no consent because everything the defendant trafficker told the woman is a lie...no one can consent to a lie' (2010:34). Jordan (2002:11) also takes this position when she notes that even where a person agrees to exploitative terms or bad conditions of work, it will still be a case of trafficking, if the recruiter intended to hold the person in debt bondage or forced labour.

Hypothetical Example

Asabe purchased travel documents from King and unknown to Asabe the travel documents sold to her were forged. King facilitated Asabe's migration into Italy and upon arrival in Italy King seized the travel documents from Asabe. In Italy King provided Asabe with accommodation pending when Asabe gets a job. After about three months in Italy when it has become obvious that it was not easy to get a job, King informed Asabe that he could no longer accommodate her and she needed to look for alternatives. Not knowing anyone in Italy Asabe pleaded King and they eventually agreed that Asabe will to pay €50/week. Still without a job Asabe was eventually introduced into prostitution when King suggested that she could do that as a temporary measure in order to meet her immediate needs. But King, whilst threatening to report Asabe to the Italian immigration authorities, kept all her earnings in the name of varied expenses that were never negotiated. Finally, when Asabe thought she should have paid all the money owed, Asabe ran away with one of the male clients, John. Asabe later started working for John's family as a domestic help. In addition to doing the required domestic work John forced Asabe to share his bed and provide him with sex but refused to pay her for that. Instead John threatened to call the Italian immigration authority should Asabe protest.

In the above example, Asabe's migration, though irregular was voluntary, and though Asabe's travel documents were forged, Asabe's ignorance made her to believe that the documents were genuine. Thus, the seizure of the travel documents in Italy and King's threat to report Asabe to the immigration authority as well as John's actions are serve to illustrate coercion, abuse of a position of vulnerability and exploitation, the effect of which nullifies the initial consent to migrate, thus making Asabe's situation a case of trafficking. Asabe's case also illustrates how other criminal activities such as fraud may be incidental to trafficking activities.

The question then is should all the ingredients of the offence - the act, means and exploitation - be present contemporaneously to ground the offence of human trafficking? The position put forward by the Council of Europe and Gallagher (2010) is that the three elements must be concomitantly present to establish the offence of human trafficking. This conclusion may not be unconnected with the manner in which the Trafficking Protocol framed the elements of the crime in the definition: 'by means' and 'for the purpose' so that the act appears closely tied to the means and both may be taken as inextricably tied to the purpose. The implication of this position is that where one of the elements such as exploitation is lacking, the act may not be considered to be trafficking.

But according to the UNODC, for the offence of human trafficking to take place, the minimum requirement is the act element, provided that there is a clear manifestation of the intent to exploit, exploitation need not have occurred (UNODC, 2009:6). Although this latter position may be difficult to prove, it aligns with the provisions of article 5 of the Trafficking Protocol which requires State parties to criminalise an attempt to commit a trafficking act; this may include participation as an accomplice to such an offence and the organisation of other persons to commit such an offence (UNODC, 2006). Furthermore, to insist that occurrence of the three elements of trafficking to establish the offence of human trafficking is contrary to the spirit and letter of one of the three purposes (prosecution, prevention and protection) of the Trafficking Protocol, prevention.

Case law on trafficking especially as it relates to the different elements of trafficking is still evolving. But in the Australian case of *R v. Wei Tang*, exploitation was taken as the key issue to determine whether trafficking had occurred or not. In that case Ms Tang was accused of having purchased five women from Thailand to work in debt bondage conditions in a legal brothel in Australia. The women were alleged to be aware that they were being recruited to work as prostitutes before they left Thailand. They arrived in Australia at different times between August 2002 and May 2003 on fraudulently acquired tourist visas. The debt owed to Ms Tang had to be repaid by working in a brothel six days a week over a period of seven to eight months. Ms Tang

withheld the women's passports and their return tickets which they had used to gain entry into Australia. There was no other evidence of physical maltreatment by the accused. Ms Tang was initially convicted and sentenced to ten years' imprisonment on five counts of possessing a slave and five counts of utilising a slave, contrary to Section 270.3(1)(a) of the Australian Criminal Code, and upon final appeal conviction was upheld.

In the Italian case of Sahel, 25 May 2012, involving 17 Nigerian women in a severe state of exploitation and prostitution, the Court of Assizes in L'Aquila gave judgment in favour of the women. The Court found the defendants guilty of serious crimes, including criminal association with the purpose of trafficking, slavery and illegal immigration, and ordered payment of compensation to the victims. The ruling of the court made reference to the provision of Article 600 of the Italian Criminal Code (enslavement) in relation to exploitation in prostitution and the Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

4.5. The Implication of Consent under the Trafficking Protocol

The opening sentence in the preamble to the Trafficking Protocol states that "Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach ..." underscores the place of prevention in the trafficking of women for prostitution. Aside from the phrase 'effective action to prevent' the key words that are of interest in that declaration are 'requires a comprehensive international approach' which may also have informed the language of the Statement of Purpose of the Trafficking Protocol. By article 2 of the Trafficking Protocol, the Statement of Purpose indicates that the purpose of the Trafficking Protocol is threefold, namely to prevent trafficking, to protect victims of trafficking and to prosecute traffickers. As part of its preventive strategy, Article 9 calls on State Parties to put in place measures, including bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, under-development and lack of equal opportunity. In addition to addressing the factors that make people

vulnerable to trafficking, Guideline 7 of the Recommended Principles and Guidelines on Human Rights and Human Trafficking urge States to consider demand as a root cause of trafficking. Thus article 6 of CEDAW requires that State Parties take appropriate measures to suppress all forms of trafficking and including the exploitation of women in prostitution. Such steps can be interpreted to include addressing factors that facilitate trafficking.

With respect to States' obligation to protect, the Trafficking Protocol appears to be more concerned with the criminalisation of trafficking than with protection of people who may have been trafficked. This fact is evident in the provisions of the Trafficking Protocol on 'criminalization' and 'assistance to and protection of victims of trafficking in persons', articles 5 and 6 respectively. For instance, for addressing the criminality of trafficking article 5(1) of the Trafficking Protocol requires that

each *State party shall* adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.' (Emphasis mine)

In contrast article 6 on victim protection requires that

'In appropriate cases and to the extent possible under its domestic law, each State party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential' (emphasis mine).

Thus while the language of criminalisation appears to be mandatory, the drafting style of article 6 seems to suggest that the obligation to protect is a discretionary act on the part of the States (Gallagher, 2010). Although the Recommended Principles and Guidelines on Human Rights and Human Trafficking emphasises the primacy of the protection of human rights of trafficked persons, in reality, States tend to focus more on the spirit and letter of the Trafficking Protocol regarding law enforcement than on victim protection. And because the Recommended Principles and Guidelines is a policy document it does not have a force of law and may thus not be justiciable. Coupled with the challenges inherent in the different international mechanisms on human rights protection it may therefore be difficult to seek to enforce the protection

of the rights of victims of human trafficking (Gallagher, 2009; Cole, 2005). Thus Scarpa (2008) has argued that the issue of victim protection is only expressed in policy documents but is not backed by law. Further, current State practice suggests that most States often seek to promote sovereignty as against protecting victims of trafficking (Cole, 2005). For instance, restrictive immigration rules and policies are made more to protect the territorial integrity of destination countries thereby complicating the proper identification of actual victims of trafficking. The issue of protection becomes even more problematic in the context of women moved into prostitution. Beyond the differences in States' approach to prostitution it will appear that the identification of a victim of trafficking is tied to the use of the consent-nullifying elements in recruiting the women. For instance, the analysis of article 3 of the Trafficking Protocol above suggests that whenever the crime of trafficking is alleged to be committed, the woman will be presumed to have consented to be moved except the woman is able to prove any of the consent nullifying elements. Such presumption obviously does not work to protect the women actually moved rather it seeks to put the women under trial to prove their lack of consent (Long, 2004). Article 3 of the Trafficking Protocol raises a presumption in favour of the trafficker, negating even the spirit and letter of article 5 on criminalisation. In the case of trafficking for prostitution, inquiring into whether the women validly consent or not may further traumatise them and in jurisdictions where there is the risk of stigmatisation, there will be underreporting of trafficking cases or unsuccessful prosecution of trafficking cases due to insufficient evidence especially where the victim of the crime is unwilling to testify. This is because for prosecutorial purposes there is no better witness than the victim herself, but if the woman is to be tried to prove lack of consent, this reduces the effectiveness of the Trafficking Protocol in all ramifications and increases the vulnerability of actual victims. Indeed it will not be incorrect to state that the requirement of consent in the Trafficking Protocol is a reenactment of the old patriarchal practice in rape cases where the women raped are often required to prove lack of consent. Matter (2006) therefore describes the position of the Trafficking Protocol as 'rather unfortunate'.

4.6. Conclusion

The aim of this chapter was to map the role of consent under international human trafficking law particularly tracing the evolution of the requirement of consent from the first counter trafficking measure to date. To this, the chapter provided the historical development of the international human trafficking law and the role of consent especially in the context of women trafficking for prostitution. The chapter identified that although the earliest anti-trafficking treaties narrowly constructed trafficking to be limited to cases where women and girls are moved into prostitution, consent under such previous regimes was irrelevant. From available literature, the chapter found that such previous efforts failed to address the problem of trafficking largely due to racial and gender undertones. One of the key criticisms against the 1949 Convention is that it failed to recognise the difference between voluntary and forced prostitution. And the position of the 1949 Convention prevailed till the adoption of the Trafficking Protocol.

The chapter notes that the debates preceding the adoption of the Trafficking Protocol was largely characterised by the ideological difference between the two dominant feminist groups on prostitution. The attempt to strike a balance between the two feminists' positions informed the perspective of the Trafficking Protocol on a number of issues including the requirement of consent. The Trafficking Protocol is praised in some respect especially in bringing about a paradigm shift where the foundation of the law is built around the three-pronged approach of prosecution, prevention and protection.

Thus, it is commonly identified as the most comprehensive anti-trafficking regime and has become a form of precedent for many States' anti-trafficking legislation. One of the comprehensive aspects of the Trafficking Protocol is its definition of trafficking as a three stage process crime comprising of the act, the means and the purpose elements. The chapter posits that the act element is one of the strengths of the Trafficking Protocol because the act element is broadly phrased such that it can be used cover anyone who may be remotely connected to the illicit recruitment and movement of people for exploitation. However, the chapter identifies the means

element as one of the most controversial aspects of the definition of trafficking. The means element requires that for trafficking to occur, the person must have been coercively moved, yet the Trafficking Protocol did not provide an exhaustive list of what constitutes coercion. Unfortunately the few examples of coercion listed in the Trafficking Protocol use vague and undefined words thereby complicating the issue of consent or lack of consent. The chapter argues that the issue of whether prostitution can be coerced or consensual makes the issue of consent and exploitation in trafficking problematic. The means element is most contested amongst feminists in relation to cases of women's movement for prostitution. Whilst the chapter notes that the notions of trafficking for prostitution and prostitution are not juridically the same, it argues that the issue of consent complicates the proper identification of voluntary migrant women and coerced migrant women moved into prostitution. But the chapter argues that in the event of doubt on the issue of consent or lack of consent, lack of consent should be presumed in favour of the women moved into prostitution, and intent to exploit presumed against the recruiters.

As to the ingredients of the offence of trafficking, the chapter contends that although the presence of the three elements is essential, the three elements need not be concurrently present as the act element may suffice in some cases. This chapter contends that in some cases the consent nullifying elements may not be manifestly present at recruitment and movement stage as that would have been a good signal to suggest the ulterior motive of the recruiter to traffic. Whilst this chapter examined the concept of consent in the light of international human trafficking law, which is more from a crime and law enforcement perspectives, for a nuanced discussion of the role of consent in the movement of women for prostitution, the next chapter attempts to examine consent from a contractarian perspective by conceptualising the movement of women for prostitution as a form of labour migration.

Chapter Five

Problematizing Consent in the Movement of Women for Prostitution

5.1. Introduction

The highlights of the previous chapter indicate that the Trafficking Protocol conceptualises trafficking as a crime with three key elements. Accordingly the chapter identified that in framing trafficking as a crime, the Trafficking Protocol is fraught with gaps by the use of unclear and undefined terms especially in the definition of the constituent elements of the crime. Most importantly the preceding chapter identified the ambiguous role of consent in a trafficking chain as a major failing of the Trafficking Protocol. In the context of women moved into prostitution, locating the place of consent using the standard of the Trafficking Protocol becomes complicated because as Ray (2006:914) and Anderson (2007; 2008) identify, one of the fundamental challenges of the Trafficking Protocol is how to categorise women moved across international borders into prostitution. Are such women to be classed as 'deceived innocent victims' or are they to be seen as 'consenting and guilty'? The difficulty of deciding either way especially in the context of transnational migration is that such classifications is complicated by a lack of clear distinction between human trafficking and human smuggling on the one hand and the conflation of prostitution and trafficking for prostitution on the other hand. Whilst chapter two demonstrates that the position of the two dominant feminist groups on prostitution facilitates the conflation of prostitution and trafficking for prostitution, chapter three demonstrates the difficulty of using consent as a standard to determine whether the movement of women for prostitution can be safely classified either as trafficking or smuggling. To overcome the inherent challenges with the definition of the Trafficking Protocol with respect to women moved into prostitution, Lim (2007:1) suggests two solutions: to conceptualise such movement as migration for sex work (labour migration) and to provide effective protection for the labour rights of the women involved in prostitution.

Consequently this chapter conceptualises the movement of women for prostitution as a form of labour migration. To do this, without necessarily rehearsing the feminists'

debate as put forward in the conceptual framework, the chapter sustains the liberal feminist conception of prostitution as sex work to problematise consent. To effectively locate the consent of women moved into prostitution, the chapter through the aid of existing literature examines concepts such as consent, agency, autonomy and choice that are commonly used in feminists' scholarship to indicate women's expression of freewill. The chapter starts with a contextual analysis of these key concepts in the specific context of the movement of women for prostitution. The second part of the chapter adopts ILO labour standards to determine whether the movement of women for prostitution can be conceptualised as a form of labour migration. To do that, the chapter labourises sexual services provided by the women moved into prostitution as work but raises concerns as to how to address the harms suffered by the women moved into prostitution.

5.2. Understanding Consent, Agency and Autonomy in Prostitution

To be able to conceptualise the migration of women for prostitution as a form of work it is expedient to examine the nature of the agreement between the women and their recruiters and the extent to which the agreement both to migrate and to work as prostitute is consensual. Why is it important that there is consensus between the women and their recruiters and what are the indicators of consent in such cases? Is consent demonstrated when migrant women offer sexual services in exchange for money or other material benefits? How best do you interpret or treat situations where such benefits go directly to the recruiter other than the women? Is there any need to inquire into the women's capacity to validly consent to such transaction? Should the background of the women such as illiteracy and poverty amongst others be important considerations in determining capacity to consent? To understand the role of consent in women's migration for prostitution and identify the indicators of a valid consent it is needful to understand the concept of consent.

In legal treatise, consent features strongly in property law, contract, tort and in criminal law and may effectively act as a defence to wrongdoings, excluding criminal culpability or denying an innocent injured party any remedy (Western, 2004). Western citing Hurd (1996) referred to consent as the normative 'magic' that can transform a

monstrous crime into a conduct that is criminally harmless. According to Western, the essence of consent is to locate the normative boundary between a criminal activity and a non-criminal activity. Western notes that consent is not a generic concept therefore it is needful to have an understanding of the normative presuppositions of person's conception of consent. Western's illustrations of the contrasting and cross-cutting nature of consent is beyond the scope of this work, but for consent, as it is sought to be understood here, it is necessary to strictly differentiate the role of consent in a criminal activity from an agreement of a commercial nature. Consent, in the context of migration for prostitution, is very important because it is capable of transforming what would have ordinarily been a criminal act and a serious human rights violation, trafficking, or a serious immigration offence, human smuggling to a labour migration issue of no concern to international and national human-trafficking law (Wertheimer, 2003:119-21). The implication of that from the liberal feminist's perspective is that consent becomes a shield used to protect personal privacy especially the concept of the women's personal autonomy from state regulation (Dworkin, 1996: 25-26, 250-54; West, 2008). According to Wertheimer (2003) the value of consent lies in the idea that it is used 'to facilitate mutually beneficial interactions'. In the light of Wertheimer's conception, when a woman in pursuit of her desire for a better life moves from Nigeria to Italy to work as a prostitute, such migration being facilitated by another, in the absence of coercion or deception and exploitation, such migration is mutually beneficial. Whether such migration is regular or irregular and what may transpire later where the relationship continues is not clear except further information is provided to the determination of valid consent. According to the United Nations' Special Rapporteur on Violence Against Women, Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women, Commission on Human Rights, report of February 2000,

The lack of informed consent must not be confused with the illegality of certain forms of migration. While all trafficking is, or should be, illegal, all illegal migration is not trafficking. It is important to refrain from telescoping together the concepts of trafficking and illegal migration. At the heart of this distinction is the issue of consent.

What then is consent? Consent literally can be interpreted to mean to agree, accept or assent to do something. But an interesting definition as provided by s.74 of the United Kingdom Sexual Offences Act, 2003 is insightful and relevant to the discussion in this chapter. The section provides that “a person consents if he agrees by choice, and has the freedom and capacity to make that choice.” It therefore implies that it is not enough to give consent; the consent must be freely given by a person who understands the nature of what she is consenting to. Consent therefore necessarily implies the freedom of choice, thus Simmons (1999:125) also identifies that the words ‘consent’ and ‘choice’ are frequently used to mean agency, which is the capacity of a person to choose and or take action.

Consent, in the light of the liberal feminist position on prostitution not only seeks to make the transaction between the women moved into prostitution and their recruiters a private act but also one of a commercial nature. Whether from the perspective of a commercial agreement or a private concern, for consent to be valid, it must be freely given in a non-coercive environment; the person giving the consent must also have the requisite capacity to give valid consent. The need for certainty of terms cannot be overemphasised thus the parties should have full information and understanding of what they are consenting to. Also the timing of consent and the ability of the parties to be able to withdraw such consent at any time without fear of intimidation are all very important indicators of voluntary consent. Unfortunately, the framing of consent under the Trafficking Protocol (article 3(c)) is done in such a way that the issue of capacity is only made applicable to children. And the liberal feminists have construed inquiry into the capacity of women to validly consent to a migration for prostitution pact as an attempt to undermine women's agency. This thesis posits that to effectively treat women's sexual services as work requires xraying such transaction using contract lens and that does not undermine women's agency.

Using the identity of Nigerian women frequently moved into prostitution in Italy as indicated from the data analysed in the next two chapters suggests, most of the women are from economically deprived backgrounds and are frequently moved under guise of cultural religious practices under which the women are recruited through the

juju oath. Most of these women as the data from the fieldwork suggest are largely uneducated who have never travelled out of Nigeria and may therefore not understand what is required to migrate out of Nigeria. To therefore answer some of the earlier questions raised, it may be difficult to state that these group of Nigerian women have the requisite capacity to understand the nature of migration to Italy to be able to validly consent to migrate for prostitution.

With respect to choice, the recognition of poverty as a limiting factor under the Italian anti-trafficking law suggests that the choice of Nigerian women to migrate for prostitution is relative to the women's financial capacity to be able to afford to migrate. This is in addition to the findings in the subsequent chapters on the role of the *juju* oath ritual which as will be seen later may constrain the choice of the women to opt out of the agreement before leaving the shores of Nigeria for Italy. In the context of the destination country, the women's choices may also be constrained by restrictive immigration policies that make regular migration and job in the formal sector the least attractive choice just as anti-street prostitution policies in Italy may also constrain the choices that migrant women make. Thus, West avers that, 'Our choices are differentially restricted, and as a result we disproportionately suffer' (2000:151; 2013).

Choice according to Schwartz represents people's testament to their autonomy, thus the author states that 'freedom of choice is an expressive value' and considers the relationship between choice and well-being as 'monotonic' (2012: 272-3). Although Schwartz posits that too much choice may induce paralysis, this chapter contends that the lack of sufficient array of choice from which to choose may frustrate the giving of informed consent by women seeking to migrate to work in prostitution. When a woman is well informed and has viable alternatives from which a choice is made without interference from anyone and in the absence of structural inequality, such a woman must take responsibility for her actions. It is in that sense that agency is effective and according to Clark *et al* (2007) choice may then become the capacity for self-direction.

As to the meaning of the word agency, Wheaton *et al* (2010) defines agency as an

individual's personal decision-making ability. Agency according to Showden (2011) implies the act of considering choices and having the information upon which to deliberate. The author, therefore, argues that agency is the product of autonomy and freedom. Agency in the context of migration for prostitution has to do with women's capacity to make a personal decision to migrate and work in prostitution. To exercise such agency is to be able to set boundaries to a relationship between the recruiters and the women, including the right to recall consent earlier given as well as being able to exercise that right of recall whenever the need arises (Touzenis, 2010:33-4). Accordingly, therefore, when neither of these can be done consent is lacking and that is when exploitation begins. Wheaton *et al* notes that '*The question of agency is a question of the relative amount of personal decision-making ability a trafficking victim retains. It is assumed that some personal agency is limited when a person is trafficked. This loss of agency by the victim is noted by the language of both the UN Protocol in its statement, "having control over another person"*' (2010:116)

Thus the concepts of agency and choice in the context of the movement of women for prostitution is as complex as the concept of consent and may not help to establish that Nigerian women validly consented to migrate for prostitution. The moral and legal rightness of agency in the context of this discourse demand that Nigerian women moved into prostitution requires that the women in the exercise of agency thoroughly understands the choices available to them, with their final decisions made free of any influences as well as being fully aware of the consequences of their decision. True exercise of agency also requires that the women accept the responsibility for the consequences of their actions, whether good or bad. It is important to note that sometimes the law sets limit to personal agency as form of safeguard to protect people from self-harm that may amount to human rights violation. And such safeguards may be imposed on contractual agreements irrespective of the gender of the parties and nature of the transaction. So that whilst women may choose to go into prostitution as a form of work, such choice must be a unilateral decision of the women and not one instigated by structural inequalities, familial pressure or deception by acts of a third party. As will be seen in the subsequent chapters the experiences of Nigerian women moved into prostitution in Italy suggest that their personal

decision-making power may be limited both in the choice of migration and the condition under which they work as prostitutes in Italy. Such limitations question the axiom of the women's agency and the choice to migrate for prostitution. Therefore MacKinnon posits:

Sex workers are expressing what its academic advocates term their 'agency.' Of the many meanings of this slippery piece of jargon that no one seems to think they have to define, agency here appears to mean freely choosing, actively empowering, deciding among life chances, asserting oneself in a feisty fashion, fighting back against forces of femininity, resisting moralistic stereotypes (2011:273)

MacKinnon argues further that if agency truly means the ability to freely make a choice, the fact that women through prostitution have multiple partners (an act that was traditionally seen as the exclusive preserve of men) should not be deemed to be freedom. MacKinnon (1993; 2006) has therefore asked that if prostitution is a voluntary choice, 'why are those with the fewest options the ones in it?' Whilst this thesis does not rule out the possibility of some women voluntarily seeking to migrate to work in prostitution, it contends that the idea of exercising such a choice necessarily implicates the option the choice to opt out of such agreement subsequently.

I now turn to examine the word, autonomy. The word autonomy is derived from two Greek words, *autos* and *nomos*, meaning self and rule of law respectively (Hoffman, 1998; Wertheimer, 2003:125). According to Hoffman, in the ancient Greek City State, the words were used to mean that the citizens could make their own laws, as against being under the control of a dominant power. Autonomy therefore requires the equality of the women and their recruiters and in reality the balance of power tilts heavily in favour of the recruiters. Howard-Hassmann defines autonomy

... as the individual's legal and practical capacity to make and act upon her own life choices. Autonomy implies that the individual has her own sense of self, enjoys moral and ethical equality with others and has the right to participate in moral and ethical decisions regarding not only her own private life but also the life of the community and country. Implicit in autonomy is the notion of agency (2011:433)

Hence, when an individual makes her own decisions and takes action free of third

party influence, such an individual is exercising autonomy (Beauchamp & Childress, 2008; Maclean, 2010:40). Personal autonomy, therefore, includes at a minimum, self-rule that is free from control or interference from others around them and is also free from limitations that are capable of preventing a meaningful choice, such as insufficient information or lack of understanding of the nature and consequences of the choice to be made (Beauchamp & Childress, 2008:100-1). With respect to women, Howard-Hassmann argues that autonomy implies that women have the legal, moral, and personal capability to decide where their interests lie, which social values they ascribe to and the identities or beliefs that they treasure. The autonomous woman, according to Howard-Hassmann, is a performer and not one acted upon.

Autonomy therefore has very broad connotations, but for purposes of this research is used in a limited sense to mean any or a combination of the following: self-rule, freedom, dignity, independence and individuality of women (Wilkinson, 2003). Agency as used in this chapter is as conceived by Showden (2011) to mean autonomy and freedom without interference from external factors whether environmental and relational factors. Thus the interaction between freedom and autonomy is what amounts to agency.

5.3. The Movement of Women for Prostitution as a Form of Labour Migration

The liberal feminists' assumptions on consent and coercion that inform the sex workers' rights has its foundation in the liberal theory which advocates the concepts of autonomy, individualism, and the non-interference of the State on individual choices. Liberal theory is based on John Locke's political theory which assumes that every man is naturally born free and equal, Locke, therefore, argued that every individual has rights and these rights are independent of the laws of the State (Watner & Gramling, 1986; Tuckness, 2011). Locke used his claim of equality and freedom enjoyed by all persons as part of the basis for a legitimate political government of any society (Hoffman, 1998). And according to Laslett, Locke's argument is premised on the assertion that the individuals that make up a community in order to enjoy a steady life conditionally transferred some of their rights to the government, thus giving rise to a social contract between the State and the citizens

(Laslett, Locke: Two Treatises of Government, 1988). Liberal feminism is a development of this idea of liberalism, thus they accept women at all levels and society as free and autonomous individuals with full capacity to make choice and give consent.

With respect to prostitution, the liberal feminist's stance on prostitution is closely tied to the political thought of John Locke's position:

Whatsoever, then, he removes out of the state that Nature hath provided and left it in, he hath mixed his labor with it, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state Nature placed it in, it hath by this labor something annexed to it that excludes the common right of other men. For this "labor" being the unquestionable property of the laborer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good left in common for others. . . . (The Second Treatise on Civil Government (1689))

The liberal feminists adopt Locke's saying to advance the position that a woman has ownership of her body and can commoditise that at will. Anderson (2000:3) notes Locke's position of property of self-considered the human body as God-given and therefore sacred. The author states further that Locke's ideas reflect that 'a man does not stand in the same relation to his body as he does to any other type of property. . . . So a man does not have the right to kill himself, or put himself into slavery, because he is the work of God' (2000:3).

To conceptualise the movement of women for prostitution as work, this section adopts ILO labour standards to problematise the transnational movement of women for prostitution with particular focus on locating consent. It is important to note that the same factors that facilitate trafficking, push and pull factors as considered in chapter one, are also applicable here, but this section, in order not to overstress such issues, adopts the push and pull factors earlier identified here.

The increasing inequality between States has influenced the movement of people across international borders in search of better opportunities, making labour migration a dominant feature in contemporary migration policies as well as the labour markets. But labour migration issues are more complex than people simply moving from their

country of origin to another country for work. A less problematic issue in labour migration is where a person secures a job in the destination country and follows the legal route to obtain a work permit that allows the person to work in that destination country. Such cases are not free from controversies but they are less complicated than when people use irregular means. Whilst destination countries have developed regulatory frameworks for the employment and movement of migrants, most of such regulatory frameworks are frequently based on the assumption that the distinction between irregular and illegal migrations is well defined. It is based on that assumption that this section seeks to conceptualise the movement of women for prostitution as a form of labour migration. To do this, the section adopts the provisions of the ILO Declaration on Fundamental Principles and Rights at Work of 1998 (ILO Declaration) and ILO Multilateral Framework on Labour Migration as the minimum standards. This is because whilst the ILO Multilateral Framework comprises of non-binding principles and guidelines for labour migration, the ILO Declaration in its preamble makes a case for a class of people referred to as 'persons with special social needs',

Whereas the ILO should give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers, and mobilize and encourage international, regional and national efforts aimed at resolving their problems, and promote effective policies aimed at job creation;

This chapter postulates that poor Nigerian women moved through irregular means, under the *juju* oath and debt bondage for prostitution are 'persons with special needs' because *juju* and debt bondage further complicates the identity of the women under consideration. The fundamental principles of the ILO Declaration as it is sought to be applied in this section are: Freedom of association and the right to bargain collectively; Elimination of all forms of forced or compulsory labour; Effective abolition of child labour; Elimination of discrimination in employment and occupation.

To effectively knock off coercion in a labour migration agreement there must be freedom of association and collective bargaining. This is probably what Doezema (1997) sought to protect when the author posits that prostitutes can also have unions that will give the women control over the prostitution business. But the conditions under which Nigerian women are recruited and moved into Italy for prostitution

suggest that Doezeema's postulations are far from realistic when applied in some context. As will be seen in chapters six and seven, Nigerian women moved into Italy for prostitution do not enjoy the luxury of collective bargaining. According to Sample, it is injustice 'If a person is in a weaker bargaining position because of a past injustice, we stand to gain disproportionately in virtue of that injustice' (2003:85).

Whilst States have the sovereign right to develop their own policies on labour migration, the ILO Multilateral Framework on labour migration enjoins States to cooperate through bilateral and multilateral agreements between sending and destination countries. Cooperation on the issue of prostitution as work may be difficult due to differences of approach on prostitution by the States. Thus, even where the recruiters and the women agree on a migration pact, such agreement may well be illegal in countries like Nigeria, and the anti-prostitution policies in Italy such as the policy on street prostitution may make the agreement incapable of performance.

In the light of the findings as analysed in chapters six and seven, the women are frequently unable to bargain the cost of migration due to financial constraint, the exact nature of the job and the wage to be paid largely due to ignorance of what is required to make such journeys, poverty and the prevailing situation in destination country. It is, therefore, not uncommon to find women who thought the recruiter was only helping them to get out of their poverty situation or even when they are aware that they will have to pay the recruiter any sum of money, thought that the amount involved can be repaid within a short period of time. In addition to the forgoing, the unilateral debt imposed on the women when they moved into prostitution puts the recruiter and the women in an unequal bargaining position with the balance of power leaning to the favour of the recruiter. Thus Nelson (2004) and Corrigan (2001-2002) advance the position that the relationship that exists between the recruiter and the women moved into prostitution is such an unbalanced one that the women are often incapacitated by a number of factors from being able to negotiate the migration agreement in their own favour. According to Wertheimer, 'significant inequality between the parties makes 'genuine' or valid consent impossible' (2003:36) According to Kelly, the plight of women from developing countries like Nigeria and the

condition under which they are made to work in destination countries does not suggest that the women are in a position to negotiate the migration contract. Thus, Kelly (2003) whilst not contesting that some women may choose to work in prostitution but questions the possibility of the women being able to finance their own migration. According to Kelly:

This model might explain movements between neighbouring countries, but it is extremely unlikely that large numbers of women – who everyone acknowledges are coming from situations where they are unemployed and in poverty – could afford to travel between or across continents. It is also an open question how they find their way into sex markets thousands of miles away, without facilitation, or even direct recruitment. Few can arrive without considerable debts, and quite how their circumstances are different from debt-bonded trafficked women, and why in this case such circumstances do not constitute human rights violations, remains to be explained (2003:140)

Freedom, in that context, could also mean that the women have knowledge and full understanding of what they are agreeing to. But the extent of the knowledge is a relevant factor, Ray (2006:914), for instance, notes that women moved into prostitution often exhibit varying degrees of knowledge. Findings from Nigeria and Italy also suggest that some Nigerian women have partial knowledge as to the nature of job they are being recruited for. But the knowledge that is sought to validate a contractual obligation must be full and total, including the knowledge as to the risk involved. Suffice to state that partial or inaccurate information diminishes agency and qualifies, according to Showden (2011), as partial agency. Raviv (2003:662) argues that because the women moved into prostitution are often young and recruited from rural areas, generally poor, uneducated, and often lack the necessary knowledge of regular migration, they offer a good example of people with partial agency. But Cameron (2008) is of the view that for a woman to qualify as a victim of trafficking she must be blameless in every respect.

To effectively exercise agency to consent as conceptualised by Showden (2011), freedom can only be deemed to have been exercised where the women and the recruiters are able to bargain the terms and conditions of the agreement free of all the consent nullifying elements. It is important to note that any form of pressure

interfering with the freedom of the parties to freely negotiate is a denial of personal autonomy (Wilkinson, 2003). So that, as demonstrated in chapters six and seven, even when Nigerian women are moved into prostitution in Italy, their freedom is diminished from the moment the *juju* oath is administered on them.

As mentioned elsewhere in this thesis, freedom will also mean the freedom to terminate the relationship without any form of fear, pressure or intimidation. It follows that the environment in which the agreement was made or the environment in which the women are made to work should also seek to protect the freedom with which the agreement was made. Showden (2011) refers to this as the situational agency and argues that, the level of freedom that a person enjoys in making a choice as to whether or not to accept a proposal affects the quality of the choice made as well as the legality or enforceability of the outcome. It is, therefore, important that in conceptualising the movement of Nigerian women for prostitution in Italy, the environment under which the women are recruited, moved and made to work at the destination country should be free of coercion.

In the context of Nigerian women moved into Italy for prostitution, it is difficult to argue that the negotiation between the women and their recruiters has respect for the parties' freedom especially the women's freedom to negotiate. Data obtained during this research suggests that Nigerian women are frequently unable to negotiate because oftentimes the women have little or no information with which to negotiate the migration agreement to Italy. The women are also unable to disengage at will from the relationship due to the fear of the consequences of breaking the *juju* oath. The situation that the women frequently find themselves in Italy is further complicated by the unilateral imposition of an ever increasing debt that complicates the choices available to the women. And this is one of the grounds upon which Kelly (2003) challenged the idea of women's free choice to migrate to work in prostitution. Thus, Wheaton *et al* (2010) identify that agency may be flawed by reason of debt bondage just as agency may be lost due to the exploitation of a person's vulnerabilities. The European case of *Rantsev v Cyprus and Russia [2010]* best illustrates how the agency of women may be diminished or completely denied. In that case, the

agreement was for the Russian woman (deceased at the time the matter went to court) to work in Cyprus as a cabaret artist, but she was not aware that she could not leave the cabaret at will. Ms. *Rantseva*'s insistence to leave Cyprus met with high powered resistance from her employers including the use of the police to intimidate her. It was in the course of such situation that *Rantseva* died mysteriously, having fallen from the balcony of a building. Similarly data from Italy suggest that some Nigerian women lose their lives in transit and some others get killed by the criminal gangs they work for. Accordingly, the threat of harm or death or actual harm does not only deny the women's freedom and agency, thereby constraining valid consent, it is also a denial of their right to life.

In a genuine labour contract there must be mutuality between the autonomy of the women and the freedom to exercise such autonomy to achieve agency. Thus, McGregor (2005) and Crown (2007) argue that when a woman is exercising her agency, her desires to migrate for prostitution should match her intentions. But Hughes (2002) has argued that it is unreasonable to argue that women moved into prostitution consented to be moved, when most are identified as deceived with respect to the nature of work. According to Miriam (2005), at best the women can only be 'sexual agents', because the idea of agency can only be described as an 'idealist and expressivist' notion of freedom as it exists in an internal process of self-definition and value-creation. Miriam further argues that the description of a woman as a sexual agent denotes that a woman is contracted beforehand for men to have a sexual right to use her body, and in using her body not necessarily in a manner that she wants but in the manner that pleases the recruiter and the men who buy sex from her.

The second fundamental principle of the ILO Declaration is that it seeks to eliminate all forms of forced or compulsory labour. What amounts to forced labour in contemporary times is contestable but following the definition of the ILO Conventions of 1930 and 1957, the ILO in 2005 sets the following as indicators: physical or sexual violence (threat of and/or actual harm) restriction on movement; bonded labour; withholding of wages; retention of passports and identity documents and threat of

denunciation to the authorities. The issue to be considered in the context of the transnational movement of Nigerian women for prostitution is whether the women at the time of exercising their agency to enter into the migration agreement like other forms of employment were aware of the harms or conditions of work before entering into such agreement. Using Wertheimer's (2003:pp.160-61) analysis on consent to sexual relations, consent to migrate does not legitimise all subsequent acts that are connected with such migration. So that the inability of Nigerian women to withdraw the initial consent whether due to the fear of the *juju* oath or debt bondage is sufficient to make the initial voluntary migration trafficking.

The HRW (2008) notes that the end purpose of inducing women to migrate for prostitution is often not in the best interests of the women but an avenue to gain undue advantage of the women who later exploited. Thus the movement of women for prostitution may include the elements of forced labour as the data in chapters six and seven suggest. But it is important to state that the indicators of forced labour both within and outside the context of trafficking is legally unacceptable because forced labour carries with it some level of criminality. It is therefore an issue that goes beyond breach of contract. Indeed the ILO conceives of illegal exaction of labour more as a crime than a contractual agreement. Accordingly article 25 of the 1930 Convention states: 'The illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced.' Further the case of *Rantseva v Cyprus and Russia [2010]*, affirms how an initial agreement to migrate may become a case of forced labour.

The third principle is effective abolition of child labour. Whilst this research is not exactly focused on children moved into prostitution, a brief comment on this will not deviate from the core objectives of the research. The liberal contractarian position on prostitution, as presented by Ericsson (1980: 362-6), argues for the recognition of women's rights to sell their sexuality just like any other person offering their labour in any other form. Ericsson's model of sound prostitution, does not agree with the way prostitution is currently practiced, it requires that prostitution be decriminalised, with

prostitutes having the same legal rights like workers in other sectors to work in a free environment; that prostitution should not include children; those involved in it should be free to choose to be prostitutes and it should be open to both men and women. Pateman (1983; 1988) faults the contractarian position because it is based on the idea of a free market where every individual is equal. Pateman therefore argues that prostitution is morally undesirable no matter the reforms suggested. Pateman argued further that the idea of contract in prostitution is put forth forward to hide the abusive nature of prostitution. Current reporting on the incidences of trafficking for prostitution suggest that the idea of sound prostitution is more idealistic than real.

The last principle is on elimination of discrimination in employment and occupation. O'Toole *et al* (2007:368) and Fredette (2009) notes that whilst men are also vulnerable to being exploited in prostitution, most women are most affected. O'Toole *et al* note further that:

Women are still the majority of the world's poor, under-represented demographically and substantively in legislative bodies and courts, and deprived of the rights to good health, literacy, and self-determination in so many corners of the world (2007:371)

And as if that is not enough, the campaign for prostitution as a recognized form of work is not being advanced for both gender but more for the women. Poverty, like prostitution has assumed a feminine gender, and the liberal feminists are yet to clearly show how prostitution can actually be used to bridge the gender gap or improve on the discriminatory experiences of women in all facets of life. MacKinnon (2011) and Kelly (2003) therefore, argue that genuine agency is questionable in the face of constraining circumstances faced by most women. Mackinnon (2011:277) notes that the reference to prostitution as a form of work is often made in the context of prostitution being the 'oldest profession' yet 'It is not unusual for the women in the industry to get further into poverty, deeper in debt.' Accordingly, Pateman (1988) argues that such contract is the means through which modern patriarchy is constituted because the notion of individuality is used to describe the male. Pateman (1988) identifies that the idea of 'free contractual relations' with respect to prostitution is 'the law of male-sex right' where the traditional rights possessed and exercised by men over women's bodies are preserved.

I will examine two more related issues, the services offered by women moved into prostitution to determine the form of labour offered, and how to classify the harms as experienced by the affected women before bringing this chapter to a close. O'Connell Davidson interrogating whether sexual services constitute property that can be validly offered as a contractual transaction, examines the issue of sexual labour as a 'transfer of powers of command over the person'. The author states:

It is not that the prostitution contract allows the client to buy the person of the prostitute while the employment contract merely allows the employer to buy the worker's fully alienable labor power. Both contracts transfer powers of command from seller to buyer (the extent of those powers and the terms of the transfer being the subject of the contract), and so require the seller to temporarily surrender or suspend aspects of her will. (2002:86)

O'Connell Davidson (2002) raises the concern that the liberal idea of property in a person raises conceptual questions as to what can or cannot be commoditised and contractually exchanged in the market place. Also Anderson (2007) identifies that there is the challenge of what is socially and legally constructed as an acceptable form of work amongst States. Unlike other forms of employment the problem that arises in conceptualising the movement of women for prostitution as a labour or employment issue is that there is no uniform State practice on the legality or otherwise of prostitution.

Pateman (1983:561) had earlier argued along the same line when the author argues that '*prostitution remains morally undesirable, no matter what reforms are made, because it is one of the most graphic examples of men's domination of women*'. According to Miriam (2005) the nature of the services offered by women in prostitution involves their bodies and therefore refers to such contract as a 'disembodied agency'. According to Pateman's position, women in prostitution sell their body and the attempt at consentising such sale to make it contractual is to systematically remove the patriarchal elements of society from the domain of logical scrutiny. Not everyone agrees with Pateman's position (1983:562) that women in prostitution sell their bodies and do not sell services, Schwarzenbach for instance argues that 'Pateman here commits a critical error. There is a legitimate sense to the contractualist's claim that the prostitute does *not* sell her body, but offers, in fact, a

'service'. To illustrate the foregoing Schwarzenbach (1990-1991:221) examines the concept of 'labour-power' as first introduced by Hegel in his Philosophy of Right, the examination of which is beyond the scope of this work. Schwarzenbach attempt to illustrate the foregoing by comparing the choice of a woman to become a professional dancer with prostitution and questions the attempt to treat them differently thereby implying that prostitution does not violate the autonomy of women.

My autonomy has not been infringed because others make visual use (as it were) of my body's activities temporarily; it has been my decision to make public and for hire certain particular expressions of my physical being for a restricted period of time. If, however, there are no limits on the time I must dance (if I must dance non-stop all evening, for example), or if I must relinquish the wider range of my abilities (such as my reason, or my religion, etc.) personality will clearly be violated.

If Schwazenbach's analysis is applied to Hegel's illustration, a woman who is moved into prostitution or made to undertake sexual acts persistently gives up her person and is therefore a sexual slave. But if a woman makes a choice as to when and how to use her body in a safe environment, according to Schwazenbach, the woman has not sold her body but sexual services and the fact that other women may find this repulsive does not make it wrong. There are also other feminist like Sanders (2005, 2008) who are of the view that there is no difference between prostitution and other forms of work. Also in support of that position is Scoular (2004: 345) who argues that the 'domination theory' is unduly used to determine gendered power that essentialises women in a way that 'fails to move outside the phallogentric imagery'. Maher (2000) also rejects the radical feminist position on the basis that it leaves women 'devoid of choice, responsibility and accountability', and for women in prostitution it denies their agency as individuals and ignores the choices they make. And Weitzer (2005:215) states that the liberal feminists position 'focuses on the ways in which sexual commerce qualifies as work, involves human agency, and may be potentially empowering for workers'.

But the idea that prostitution could be a product of free choice necessitates that we raise a very pertinent question that has featured in some of Mackinnon's (1993, 2006) works. If prostitution is an expression of free choice: "why the women with the fewest

choices the ones most often found doing it?” But PNG6 (LEADS-Nigeria) mentioned that the fact that Nigerian women have limited opportunities available to them as compared to their male counterpart and women are generally constrained by patriarchal customary practices that make them more vulnerable to exploitation. Consequently, Drakopoulou (2007) states that the right of choice as advanced by the liberal feminists is a neo-liberal concept that fails to recognise the difficulties and imbalance that exist in different countries. From the perspective of another radical feminist, Barry (1979; 1995) identifies all forms of sexual labour as rape to which she argues that woman cannot validly give consent.

The problem with the two opposing positions on the movement of women for prostitution as a form of labour migration is that both positions are two extremes that do not admit of any other position that contradict their postulations. From analysis in the subsequent chapters, the data from Nigeria and Italy suggest that the fact that some of the women are not forcefully recruited may be interpreted to mean voluntariness. While this thesis does not intend to argue that such level of agency is sufficient to support an acceptable form of labour migration, it does not deny that the women may have exercised some level of agency. The acceptance of the latter position as sufficient to make such migration a labour issue ignores the reality of the different factors that intersect to work against the valid exercise of agency. For instance, the liberal feminists’ position ignores the complexity of the situation from which Nigerian women are recruited, moved through irregular means and made to work as prostitutes. Abramson (2003) argues that the adverse implication of the liberal feminists’ position on refugees and asylum seekers is that women moved into prostitution could be treated as accomplices by border agencies, deserving prosecution, instead of being treated as victims who deserve protection.

The other issue is how to reconcile the exercise of agency to migrate for prostitution with the harmful experiences that the women may be subjected to while in transit and in Italy. As the data from Nigeria and Italy suggest, in the last chapter of this thesis, Nigerian women moved into prostitution in Italy suffer different abusive situations. O’Connell Davidson (2002) has also alleged that abuses are rife in prostitution and

migrant women moved into prostitution suffer discriminatory treatment in the destination countries. Other feminists like Farley (2005) argue that prostitution is harmful to both the women involved and to women's position in society. Jeffreys (2008) notes that the legalisation of prostitution implicates the State as a pimp, Jeffreys therefore advocates that States should be seen as culpable in the continued male domination of women. And like some of the research participants in Nigeria and Italy have advanced, the movement of Nigerian women into Italy for prostitution amounts to a human right violation. It is in that respect that Balos states: *'Prostitution, consensual or not, supports and is supported by social, economic, and political inequalities. To rely on consent to determine if a human rights violation has occurred obscures the systemic subordination and inequality that supports trafficking for sexual exploitation'* (2004:163). Pateman (1988) and Overall (1992) argue that prostitution differ from labour as commonly known because the transaction in prostitution is one where the person of the woman is subjugated. From that same perspective Anderson attempts to differentiate prostitution from non-exploitative sexual relations thus: "... realized only when each partner reciprocates the other's gift *in kind*, offering her own sexuality in the same spirit in which she received the other's — as a genuine offering of the self. The commodification of sexual 'services' destroys the kind of reciprocity required to realize human sexuality as a shared good," (Anderson 1993:154-55). Thus radical feminist view sexual labour as fundamentally degrading and oppressive and they associated the harm experienced by the women to the characteristic nature of prostitution.

Nussbaum (1999) doubts whether the commercialisation of women's sexual services degrades the women who provide such services. Nussbaum draws from the old practice where the arts of singing or acting recognised in contemporary society as work was viewed as prostitution (Nussbaum 1999:277). Nussbaum therefore questions the justification of the stigma that is currently attached to prostitution as work (1999:278–79, 286–88). The author argues further that the harms associated with prostitution are not exclusive to prostitution but makes it equal to occupational hazards inherent in other forms of work. Nussbaum (1999:288-97) argues that the exploitation as experienced in prostitution is often a function of the conditions under

which the women work as prostitutes. Similarly, Kempadoo posits that “the global sex trade cannot be simply reduced to one monolithic explanation of violence to women” (2001:28). According to Kempadoo (2001: 35, 37) the idea of prostitution as an institution driven by patriarchy or one that amounts to violence against women, are “inadequate to capture the various histories, oppression, and experiences of women of color”. Therefore Kempadoo (2001:40) in arguing that the agency of women of colour is often overlooked in debates on prostitution states: “Our insights, knowledge, and understanding of sex work have been largely obscured or dominated by white radical feminist, neo-Marxist or Western socialist feminist inspired analyses that have been either incapable or unwilling to address the complexities of the lives of women of color”. Whilst Kempadoo’s position denies that the commoditisation of women’s sexuality exploits the women, the author acknowledges that the women in prostitution are often marginalised women. And to address the harm in prostitution, Kempadoo & Doezema (1998) advocates regulation of the prostitution market.

According to Anderson (2007:5), the absence of a universally acceptable minimal of employment rights especially with respect to transactions of an international nature, such as are being considered in this chapter, makes it difficult to have a unitary way of measuring exploitation and how to determine when such exploitation goes beyond the minimum threshold of a contractual obligations. And as earlier noted the Trafficking Protocol does not provide much guidance in this respect. Following Wilkinson’s (2003:79) analysis however, given the background of Nigerian women moved into prostitution, being underpaid work done is sufficient to amount to exploitation. And to be able to effectively argue that the women consented to such exploitation requires that such consent must be validly given in which case the women should have the liberty to revoke the consent. The inability of the women to revoke the initial consent makes it that they are not just selling sexual services but their sexual autonomy as well.

In which case, we are back again to the rhetoric of ‘innocent/deceived’ or ‘consenting/guilty’ conceptualisation of women moved into prostitution which has been unhelpful in determining whether the movement of Nigerian women for

prostitution is better classed as a criminal act or a labour concern. This is also not unconnected with the complexities of differentiating trafficking from smuggling. Limoncelli (2010:263) argues that the overlaps between trafficking and prostitution complicate the conceptualisation of migration for prostitution as a form of labour migration. Limoncelli (2009) also agrees that neither the radical nor liberal feminists' position sufficiently addresses the central issues of women's basic economic security in a globalised world. Thus the author argues for a gendered political economy approach to trafficking wherein gender can be mainstreamed into every aspect of analysing trafficking for prostitution (Limoncelli, 2009).

Whilst agreeing with both Limoncelli that neither of the feminist approaches adequately addresses the problem of transnational movement of women for prostitution, the author has not succeeded in putting forward a workable alternative. The weakness in Limoncelli's suggestion is that the author is relying on others to interpret the 'political economy approach'. However, Elias (2007:46-7) made reference to a gendered political economy perspective on labour issues which the author describes as the critical perspective needed to expose the gendered power relations and norms that reinforce 'gender-neutral' ways of understanding the economy. And it is in that context that Jeffreys (2009:317) criticised Limoncelli's position thus,

The problem with this analysis is that prostitution is not caused by women's poverty. Men suffer poverty too, but there is no ready market for their bodies, and certainly not amongst women, who are not the buyers in prostitution. If a husband and wife are equally poor, he can place the body of his wife into the marketplace.

Thus, Ray (2006) has argued that all unhelpful paradigms should be discarded. Rather, women's consent to migrate should be accepted as valid and their subsequent exploitation should be condemned and full protection accorded to them.

5.4. Conclusion

Based on the liberal feminist's conception of prostitution as sex work, this chapter problematises the movement of women as a form of migration for labour. In doing that, the chapter explored the meaning of concepts such as consent, agency and

autonomy commonly used in liberal feminists' discourse to advance the argument that women moved into prostitution possess the agency to make a choice to be involved in prostitution. The chapter notes that the idea of sex work is influenced by the idea of women migrants as agents of their own bodies with a right to make a choice in prostitution, including being able to migrate in pursuant of such a choice.

The chapter adopts ILO labour standard to determine whether the sexual services rendered by women moved into prostitution are borne out of free will or it is an aspect of forced labour. Using the ILO labour standard exposes the gap in the liberal feminists' conception of the transnational movement of women as a form of labour migration. The chapter suggests that even if it is not trafficking at best, such conceptualisation points to the occurrence of forced labour. The chapter therefore argues that forced labour carries with it some level of criminality the existence of which in a transnational movement, should make the act trafficking but not voluntary migration. The chapter argues further that the idea of labour migration presupposes that such women are moved via regular means only, thereby leaving out the women moved through irregular means.

The idea of the provisions of sexual service as independent of the bodies of the women who provide such services is defeated by the insufficient argument to explain how best to address the physical and psychological harm suffered in the course of such business. And in the light of the findings from the next chapter, this chapter argues that other approaches such as the contractarian and the political economy fail to address the gaps in the mainstream feminists' debate.

Chapter Six

Contextualising Consent in the Movement of Nigerian Women for Prostitution

The women who are lured into this activity are often promised that their economic condition will improve overnight once they get to Europe. In order to make sure the women don't reveal the traffickers and to further enslave them, they are made to undergo rites of passage that involve the administration of oaths and other fetish practices (Ume-Ezeoke, 2003:15)

6.1. Introduction

With respect to the movement of women for prostitution from the West African sub region, the notoriety of the movement of Nigerian women for prostitution is acknowledged in academic and non-academic works as well as international reports. Recent international reports such as the UNODC and USDOS reports of 2012 on human trafficking still identify Nigeria as one of the major sending countries in the West African sub region with women especially being moved into prostitution in Europe. According to Carling (2006) and Okojie (2009), people are frequently moved out of Nigeria into different exploitative situations, but Okojie (2009) and Aghatise (2004) note that the most prevalent form of trafficking from Nigeria is the movement of women into prostitution in Europe especially Italy. Accordingly Cole (2006) is of the view that the movement of Nigerian women into prostitution in Italy has become synonymous with human trafficking from Nigeria.

With respect to the issue of consent, it is difficult to conceive Nigerian women moved into prostitution as either consenting or coerced because in some cases the women in desperation for a better life agree to migrate. Yet their recruitment is not independent of the wider international migration flows, and other peculiar variables that facilitate their movement and eventual exploitation in prostitution. Whereas poverty is a key causation of Nigerian women's vulnerability to being trafficked, debt bondage and the *juju* oath ritual are the factors that sustain the women in varying degrees of objectionable experiences. Consequently to consider Nigerian women moved into prostitution in Italy as free agents or coerced victims require a thorough

examination of the factors that facilitate their desire to migrate and the recruitment procedure. To do this, the chapter employs face-to-face, in-depth, semi-structured interviews with 22 research participants in Nigeria. Data from the participants was supplemented by a summary of judicial proceedings and decisions on trafficking in Nigeria as well as existing literature where applicable. The chapter is divided into different sections that expose the complexity of the requirement of consent especially in the context of the transnational movement of Nigerian women for prostitution. The chapter begins with the complexity of distinguishing trafficking from human smuggling paying particular attention to the common issues that facilitate both phenomena in Nigeria. The chapter then examines the recruitment pattern employed to move Nigerian women and the extent to which the women moved are complicit in the process. The chapter raises conceptual issues on the effect of the *juju* oath ritual and debt bondage on the consent of Nigerian women to migrate and work in prostitution. The final section undertakes a context specific analysis of the role of consent in trafficking for prostitution under the Nigerian anti-trafficking framework.

6.2. Data Analysis

The IOM identifies that

Hundreds of thousands of Nigerians have migrated to Europe, and many of them have relied on human smugglers to do so, and many have also been victims of trafficking. The concepts of migration, human smuggling and trafficking overlap. In relation to Nigerian migration to Europe it is natural to see them in conjunction (2006:21)

One of the conclusions drawn in chapter three is that both the Trafficking Protocol and the Smuggling Protocol do not promote an incontrovertible delineation of the boundaries of trafficking and smuggling as distinct phenomenon. Thus it is not unusual to find the two phenomena being conflated in counter trafficking measures. Nigeria is not an exception to this practice because one of the challenges encountered in Nigeria is the idea that human trafficking and human smuggling are one and the same act. Accordingly PNG5, the coordinator of the anti-trafficking and migrant smuggling unit of the UNODC, Nigeria, states that a key issue that Nigeria needs to address in order to effectively tackle trafficking is to incorporate the

Smuggling Protocol into the body of the national legislation. The participant therefore posits that the non-incorporation of the Smuggling Protocol promotes the conflation of all irregular migration activities with human trafficking. PNG5 identifies one of the dangers of such conflation as the improper identification of actual trafficking cases which will only result in 'chasing shadows in the end'. Whilst the necessity to adopt the provisions of the Smuggling Protocol into the national laws cannot be downplayed, it is important to state that the attempt at differentiating trafficking from smuggling at the international level using the standards of consent and exploitation only exacerbates the issue.

But PNG2 of Human Rights Monitor, Nigeria (HRM) for instance does not think that the difference between human smuggling and human trafficking is such that should necessitate different treatment. According to PNG2 *'it is only you and those who are given to technicalities that will want to stress the differences between the two criminal activities'*. The basis of PNG2's argument is premised on the position that both acts are facilitated by common issues, such as the desire for better life and poverty. But PNG6 (LEADS-Nigeria) disagrees with PNG2's position. From the perspective of a women's rights activist, PNG6 raises the concern that if such conflation is allowed to continue, the movement of women for prostitution risks being conflated with other sexual offences. One of the dangers of such conflation, PNG6 identifies is the propensity of treating women moved into prostitution as criminals in States where prostitution is criminalised. This participant cites the old practice under the Edo State Criminal Law, prior to the adoption of the 2003 Trafficking in Persons Law Enforcement and Administration Act, amended in 2005 (NAPTIP law), where Nigerian women of that origin deported from Italy were prosecuted as accomplices alongside their recruiters. This participant expressed her concern that the issue of consent risk conflating trafficking for prostitution with other sexual offences which under the current prosecutorial practice in Nigeria may further traumatised actual victims of trafficking and aggravate the precariousness of the women's position. PNG6 supports the forgoing with the prevailing practice in Nigeria where rape victims are often traumatised through a criminal trial that tends to put the victims on trial in the name of inquiring into the voluntariness or otherwise of the women's consent to

the sexual act.

With respect to factors that commonly drive migration from Nigeria, Carling (2006) identifies Nigerians as itinerant people who view travelling abroad as a way of enhancing their social status. Thus, Carling notes that Nigerians have had a very strong presence in some countries in Europe prior to the emergence of trafficking issues. Affirming the value of status symbol attached to migrating abroad, PNG21 of the ILO (Nigerian office) states that, aside from the desire for a better life, one key factor that drives the movement of Nigerian women, especially those from Edo State, is that it has become a status that is socially acknowledged by some members of the Nigerian society. Some families consider having a family member abroad as a positive achievement. Most families are not concerned about the condition of life of such family members or the nature of the work they do whilst abroad so long as there is a constant flow of foreign currency from the person abroad. PNG21 cites an encounter she had in Benin, Edo State, Nigeria on a sensitisation and awareness campaign programme, where some community leaders publicly declared that 'it does not matter what their daughters do in Italy so long as they send Euros home'. Another participant, PNG14 (IOM Nigeria) also states that, 'Some families in Edo state see the migration of their daughters, even to work as prostitutes, as a thing of pride because of the dollars and euros that goes to them. At some point in Edo, families who do not have their daughters abroad are not considered to have 'arrived' (belonging to a higher social class) and others will look down on them.' But as stated elsewhere in this thesis, using Edo women as representative sample of Nigerian women moved into prostitution tends to represent Nigerian women moved into Italy for prostitution as willing agents.

But has the situation always been like that, and if not, at what point did the situation change? According to PNG2, the earliest Nigerians to migrate to Europe did so for commercial and educational purposes, and most of these Nigerians migrated from Nigeria through regular means. PNG2 states that those who migrated for educational purposes were often on government scholarships and would normally have jobs lined up for them in Nigeria to return to. Furthermore, at that time most Nigerians would

rather return to Nigeria because a university degree automatically qualifies a Nigerian for a brand new Peugeot car and other incentives. Irregular migration, according to PNG2, was more associated with political persecution in the mid-1960s and during the military rule when in his words *'it was common to have Nigerians flee Nigeria to other countries using irregular means in the name of religious or political persecution.'* According to PNG2, irregular migration from Nigeria took a new turn when during the military rule, Nigerians were motivated by a desperate move to escape the severe economic situation at the time. And since then according to PNG2, some Nigerians became desperate and just wanted to leave the shores of Nigeria:

'... without paying attention to how they leave Nigeria, or the country they are fleeing to or the nature of the work they are likely to take up in the destination country. I am sure you will remember the effort made by the Nigerian government then to discourage people from migrating abroad. Maybe you were too young then, but there was this popular television advert 'I am checking out' built around the character named Andrew.'

Although PNG2 notes that women also migrated out of Nigeria during this period, he is of the view that Nigerians who went abroad at the time were mostly skilled labour, like doctors, nurses and university teachers. Most of this skilled labour using regular means migrated to countries like the United Kingdom, America and Saudi Arabia, where their expertise was in high demand. PNG2 recalled how the Nigerian government in the mid-1980s mounted an aggressive media campaign against brain drain of skilled manpower. But with respect to the movement of women for prostitution, PNG2 states,

'Don't get me wrong, I am not saying that women were not migrating abroad then, but I am saying that I don't think that Nigerian women at time would want to migrate to work as prostitutes. In the 1980s very few women would want to be identified as prostitutes, so I don't think that the same women will now want to go abroad to work as prostitutes. To me the women who were moved then were not educated, came from a family background where the value system is low and must have found some level of support from criminal groups. You must also bear in mind that the 1980s into the 1990s was an anomalous period in the history of Nigeria, giving rise to criminal activities that were uncommon before then.'

And according to PNG20 of the Nigerian Immigration Service, the increased activities

of organised criminal activities in Nigeria in the mid-1980s and 1990s also changed migratory flows from Nigeria. Whilst not downplaying the role of poor economic situation imposed on Nigeria by the extensive military rule, especially that the period under reference coincides with the emergence of the trafficking of Nigerian women into Italy women for prostitution, it may be misleading to blame the trafficking of women for prostitution entirely on economic factor. According to other interviewees like PNG4 (WOTCLEF), PNG7 of NAPTIP national headquarters, Abuja, PNG14 (IOM-Nigeria) and PNG21 (ILO-Nigeria), there were other issues such as greed on the part of the women moved into prostitution and their families. PNG21 (ILO-Nigeria) and PNG4 (WOTCLEF) are of the view that most of the women moved from Edo state in contemporary times are driven by greed to earn foreign currencies such as euro, dollar and the pound.

However, PNG20 a senior immigration officer in Nigeria is of the view that the transnational movement of people for prostitution from Nigeria does not affect only women but men also. PNG20 states that young men of northern extraction are often moved into the Middle East for sexual exploitation and this according to PNG20 predates what is currently known as the trafficking of Nigerian women for prostitution. PNG20 states further that from experience on the field, the increase in homosexual activities has a consequential effect on the demand for young men in prostitution in some regions of the world. With respect to the movement of women for prostitution, PNG20 also notes that it is common to have research or reports identifying human trafficking as a problem peculiar to women from Edo State thereby ignoring the reality that women from other regions of Nigeria are also moved into prostitution. Thus, PNG20 states that it is not uncommon to have women from the Muslim dominated region of Nigeria moved under the guise of performing religious obligation into different exploitative situations, including prostitution.

PNG17, a law professor from Ahmadu Bello University (ABU), Zaria, notes that with respect to the nature and scale of the problem, Nigerians have lived in self-denial that women from other states in Nigeria are moved into prostitution. According to PNG17:

‘... that is part of the difficulty, and let me give you a typical example here in Nigeria. For years in the Northern part of Nigeria there has been that idea that there is no internal or external trafficking flow, only for NAPTIP to start combating trafficking flow, both internal and external, in selected northern states, the first case being in Kano of a woman and a man who colluded to traffic some girls to Saudi Arabia. There was denial for years as if it was a south or south eastern problem, especially the Edo area.’

Whilst PNG4 (WOTCLEF) agrees that the movement of Nigerian women for prostitution is not limited to Edo State, she notes that with respect to the movement of women into Italy for prostitution; Edo State takes the lead. But PNG4 (WOTCLEF) postulates that in contemporary times Edo state is fast becoming a recruitment ground for women from other regions of Nigeria moved into prostitution. With respect to the most affected region, PNG7 affirms that current data by NAPTIP suggest that whilst women are also being recruited from other regions of Nigeria, Edo State is still the most affected region.

As to whether the trafficking of Nigerian women for prostitution is a new phenomenon, PNG13 (NHRC) posits that it is possible that the movement of Nigerian women for prostitution from Nigeria may not be a new issue, because according to him the act may have been previously identified by other names under the law. Thus according to PNG13, *‘... maybe it was there before, but it’s being brought to light now by the level of awareness facilitated by information technology and the media attention to it, so it is assuming a larger-than-life image in the consciousness of people.’*

As to how Nigerian women started being moved into prostitution in Italy, PNG7 states that the first generation of Nigerians to be involved in prostitution in Italy was those who were ordinarily resident in Italy at the time. According to PNG7 these women at the time were pushed by the economic recession of the 1980s and early 1990s to resort to prostitution due to lack of viable alternatives. PNG7 also notes that the high demand for commercial sex with migrant women made prostitution a viable opportunity for some of the women who wanted to earn easy and quick money. In explaining the prevalence of Edo women in the prostitution scene in Italy, PNG7 states that Edo people were one of the largest Nigerian ethnic communities in Italy at

the time and this naturally affects the demography of Nigerian women subsequently recruited into prostitution in Italy.

6.2.1. Push Factors

PNG2 had earlier noted that irregular migration from Nigeria was largely facilitated by the level of economic decadence that was imposed on Nigeria by the long military rule. Although Nigeria is an oil-rich country, Okojie (2009), Etim & Ukpere (2012) identify that the three-year civil war and the thirty-year rule of the military at different times in Nigeria's development were typified by misrule, widespread corruption and dictatorship which institutionalised bad governance and negatively affected the Nigerian economy. Carling (2006) and Etim & Ukpere (2012) note that since the return of Nigeria to democratic government in 1999, the Nigerian environment is characterised by sporadic political, civil and religious unrest, often leading to the destruction of lives and property and the rise of ethnic militia. Thus Nigeria is poor, largely undemocratic, with high level illiteracy and gender inequality, as well as sectarian conflicts that lead to instability in most regions.

The economic environment is characterised by unemployment of both educated and uneducated youth. According to the National Bureau of Statistics, the rate of unemployment as at 2011 was 23.9% as against 21.1% and 19.7% for 2010 and 2009 respectively. According to the World Bank, poverty in Nigeria is highly pervasive. Thus, Okojie (2009) and the British Council (2012) identify that more than half of the population live below the poverty line in Nigeria. It is therefore not surprising that Olajuwon (2008) and Okojie (2009) identify poverty as something that mainly affects women, especially women who live in rural communities.

To PNG17 (ABU-Zaria), poverty and the high cost of living generally facilitate considerable rural/urban drift, such internal migration flows has significant effect on external migration flows. While the pattern of internal migration flows may be slightly different, PNG7 (NAPTIP) also identifies poverty as the key push factor for both internal and external migration flows. With respect to external trafficking flows, PNG7 notes that when Nigerians consider the option to migrate, it is often to Europe or

America, which people often believe to be the land of '*Eldorado*'.

There is also the issue of greed, according to PNG7 (NAPTIP), PNG21 (ILO) and PNG9 of the National Assembly, some of the women who get moved into prostitution are greedy and because they are often willing to do anything in the name of getting out of poverty, they become vulnerable to dubious migration proposals. These participants cite the women moved from Edo as a good example to advance the position that some of the women from this region are more driven by greed than poverty. Such greed as earlier noted is not limited to the women moved into prostitution alone but sometimes include parents who due to greed facilitate the movement of their daughters and ward for prostitution.

PNG8 (CYPF) who is also of the view that greed plays a key role in the movement of women for prostitution, the participant argues that it is difficult to raise the issue of poverty as justification for the migration of Nigerian women for prostitution. PNG8 justifies the foregoing on the basis that the women moved into prostitution from Nigeria are not the only poor people in Nigeria but are pushed by greed. But PNG16 (NHRC) and PNG6 (LEADS-Nigeria) argue that aside from poverty, women unlike men are constrained by cultural and religious practices that make them more vulnerable to migration than men. PNG16 posits that women are more vulnerable because, unlike men, women often do not have other alternatives. According to him, 'a man can trick his girlfriend or wife into prostitution and even take her to Italy for that purpose but very rarely will you hear of men who are tricked by their girlfriends into being trafficked'. Therefore PNG16 states further that the societal attitude in Nigeria that sees prostitution as an act that only suits women, increases women's vulnerability to being moved into prostitution.

As to the role of cultural practices in pushing Nigerian women into prostitution, PNG6 and PNG21 (ILO) posit that poverty reinforced by the cultural preference for the male child, which hinders the appropriate education and empowerment of the girl child at the family and community levels, limits the choices available to the girl child and facilitates the movement of women for prostitution. According to these participants it is not unusual for girls to be married off at an early age, making them economically

dependent on the men, and when the marriage fails, the cultural perception of such women is such that still make them vulnerable to trafficking. Thus PNG6 states that,

Social, economic and cultural practices that discriminate against women in Nigeria can make some women to migrate to countries where they think that things will be better in the hope of improving their lives and that of their families.

PNG6 states further that Nigerian women suffer multiple discriminations that limits their opportunity in education, formal work and access to justice amongst others and these in turn hinders the empowerment and independence of women. PNG9 of the National Assembly mentions that the rate of school drop-out for female children is higher than that of boys in most cultures in Nigeria and notes that those who are made to drop out of school are more likely to be married off early or sent out to work as domestic servants or hawk merchandises on the streets. According to PNG20 of the Nigeria Immigration Service the girls may also be moved to work as attendants in restaurants and beer saloons in major cities from where some of them are more likely to be recruited into prostitution.

Another economic related factor which PNG6 (LEADS-Nigeria) identifies as directly linked to the desire to migrate is the Structural Adjustment Programme (SAP). SAP led to the high devaluation of the Nigerian naira made migration to countries with strong currencies attractive destination countries. For instance, if a person migrates to Italy to work and earns €400/month, when converted to the Nigerian naira, the person may be earning as much as between 40,000-50,000 naira depending on the exchange rate per time. When this is compared with the national minimum wage in Nigeria of 18,000 naira per month, migrating to Europe may be more attractive to the average Nigerian.

PNG6 (LEADS-Nigeria) and PNG20 (NIS) identify corruption as another factor that facilitates the movement of women for prostitution. Whilst corruption may not be directly responsible for the movement of women for prostitution, they note that corruption plays a crucial part in the prevailing unemployment and poor economic situation in Nigeria. And to these participants, corruption frustrates any preventive measures because public officials responsible for detecting and preventing the

commission of crime may turn a blind eye to activities that promotes illicit migration. The participants further state that corruption also work against the effective prosecution of traffickers, especially where the judiciary is corrupt, thus making it difficult to tackle organised criminal activities such as trafficking, thereby promoting the culture of impunity. To affirm the foregoing, recently, an incident was reported in one of the national dailies in Nigeria of an alleged controversy between a Deputy Governor of a State, the police and NAPTIP over the unlawful release of 267 victims of trafficking and traffickers in police custody (Daily Trust, 2012). The questions that beg for answers over such incidence are: why suspected victims of trafficking and traffickers are detained or kept together? Trafficking being a crime regulated by a federal law, what has it got to do with the Deputy Governor of a State?

Finally PNG8 (CYPF) and PNG6 (LEADS-Nigeria) blame the breakdown of social, cultural and religious values on poverty because according to these participants the parents who facilitates the movement of the daughters into prostitution have lost the value system that most communities hold dear.

6.2.2. Recruitment Process

What is recruitment with respect to the movement of women for prostitution? Article 3(a) of the Trafficking Protocol starts the definition of human trafficking to "... mean the recruitment, transportation, transfer, harbouring or receipt of persons..." These different words as earlier examined in chapter four constitute the act element and the act element is the procurement of and movement of the women into prostitution. One of the key issues that will help to determine whether Nigerian women moved into prostitution in Italy are trafficked or voluntary migrants is a critical examination of the recruitment pattern used to procure the women. According to PNG21 (ILO):

The recruitment pattern used by the Nigerian traffickers is such that usually there is a middle person between the madams and the women to be ...; it is usually like a chain. ..., most women are recruited by people who know them, it could be a friend, friend's friend, an uncle, a cousin, or somebody that knows somebody within the chain. And the common method used is usually the idea of a job as a nanny, working in the restaurant or some other unskilled job and then they are given the impression or paint a picture of how the streets of Italy are lined with Euros and how it is easy to make money.

PNG21 states that it is not uncommon for recruiters to lure potential recruits with money and material gifts, both to gain their trust and to make the women believe that going abroad will improve their economic or financial status.

Another recruitment pattern identified by PNG7 (NAPTIP) is that recruiters sometimes make migration offers to women under the guise of employment agencies and sometimes, even use solicitors to draw up sham employment agreements. Thus, the women are often unaware that such agreements are make-believe and are not intended to be legally-binding agreements. PNG2 (HRM) and PNG8 (CYPF) also confirm that recruiters tend to use bogus job offers and opportunities to study and work abroad to recruit women into prostitution abroad.

According to some of the participants, the involvement of parents and guardians in the recruitment of their daughters and wards is particularly prevalent in Edo state. PNG21 states that some parents in the region of Edo and Delta states go out of their way to source for recruiters to move their daughters abroad. Affirming PNG21's position, PNG7 NAPTIP cites one of the cases that he had come across recently in the course of his work,

... There was this girl from Benin. This girl was taken to Italy, and it was her mother that made the arrangement with the trafficker's mother. She was in Italy for 1 year and was making money for the trafficker but the trafficker kept complaining that the money was not enough. Then she ran away and escaped to Germany, where she was until she was caught and repatriated to Nigeria...

PNG6 and PNG15 of (FIDA), an academic and women's rights activist argue that the practice amongst the Edo people in which parents source the recruitment of their daughters to work abroad is a strong indication of the gender inequality and discrimination suffered by most Nigerian women.

But PNG8 and PNG21 (ILO) note that the practice is fast spreading to other states in Nigeria like Plateau and Benue States is where parents of the young women or girls participate in the recruitment of their daughters/wards. According to PNG8 in some cases *'... parents are coerced with money to release their daughters to go and work in cities like Lagos, ... and from Edo or Gboko in Benue state, down to Lagos or down*

to Abuja and then from there okay, Lagos is not ... you know I can take you to Europe.' But PNG17 (ABU) and PNG (LEADS-Nigeria) blame the involvement of parents in the recruitment of their daughters/ward on the extended family system in Nigeria that promotes unregulated fostering where children and young persons are frequently sent off to live with wealthier family members.

And according to PNG11 (NIS) another high ranking immigration officer, *'... some women pay money to be moved outside Nigeria. In some instances, some women sell off their personal belongings and landed properties or indulge in the mortgaging of properties to be able pay their way and in some instances are deceived, coerced or threatened etc.'*

6.2.3. Deceived into Prostitution

One common method used to recruit Nigerian women into prostitution is deception. According to PNG6 (LEADS-Nigeria), the women are given fanciful impressions about how 'the grass on the other side is greener' or in the words of PNG7's (NAPTIP) 'it is a land of *Eldorado*'. PNG21 (ILO) states that the women are sometimes made to believe that 'the streets of Europe are lined with gold' and, according to PNG19 of the Nigerian Television Authority (NTA), 'that there are jobs in Europe so long as the women are ready to work'.

However, PNG8 (CYPF), PNG7 (NAPTIP), PNG21 (ILO) and PNG4 (WOTCLEF) are quick to state that the issue of deception may not hold in all cases involving the movement of Nigerian women for prostitution. This is because some participants make an exception of some of the women from Edo State as example of Nigerian women should not be easily deceived, and others try to limit issue of deception in recruitment to the time when the women were recruited. According PNG4, PNG8 and PNG9 (NA) women from Edo and Delta States can no longer claim ignorance that any offer to travel to Italy or Europe is not unconnected with prostitution. Their position is based on the scale initiatives such as awareness campaigns that are frequently carried out in that region. And if there are women who are actually deceived into prostitution, some of the participants argue that such women should bear the responsibility for neglecting to seek further guidance from other people

before accepting job offers that requires them to migrate out of Nigeria. PNG8 (CYPF) and PNG9 (NA) blame such negligence on the desperate desire for quick money and greed to live a flamboyant life style. PNG20 (NIS) and PNG2 (HRM) posits that deception as a recruitment method may have been more commonly used when human trafficking had not attained the level of prominence in the media as we have today. But they are of the view that it is difficult to think that people are still deceived into prostitution in contemporary times especially given the amount of information on the subject in the public domain.

It is needful to reiterate the position that the undue focus on Edo women as a representative sample of Nigerian women moved into Italy for prostitution tends to represent Nigerian women moved into Italy for prostitution as willing agents. It is difficult to assume that most Nigerian women and girls are adequately informed as to not to fall prey to the deceptions of recruiters, for instance the issue of awareness campaigns is overstated particularly with respect to women from other regions of Nigeria. As earlier noted most Nigerian women are rural dwellers where there is sporadic supply of electricity making it impossible to access information from electronic media. In addition to the foregoing most Nigerian women are also uneducated which again limits the level of information they can access. Further the awareness campaigns are often reactionary in nature and frequently donor driven so that they tend to keep focusing on Edo and Delta states to the neglect of other regions. For instance the fieldtrip to Nigeria coincided with the *NA Wa* festival (a film festival on trafficking) which was an awareness campaign but the activities was only limited to some major cities like Abuja, Lagos and Benin City.

Equally, the idea of setting a time limit as to when women were recruited in order to determine whether or not they have been deceived may be misleading. Both perspectives in the absence of verifiable data at best amounts to overgeneralisation that risks treating women who may be deceived as consenting. For instance, the 2007 case of *Attorney General of the Federation v Helen Igda* attests to the challenge that may arise in setting a time frame around deception. In that case, the accused recruited three women under the pretence that she was recruiting them to

work for another woman as hairdressers abroad. It was only when they arrived at the destination country that they realised that they were recruited for the purpose of prostitution, and worked as such until they were eventually rescued.

The recruitment and movement of Nigerian women into prostitution has grown into a complex criminal activity with recruiters increasingly becoming more organised and are adopting more refined means of recruitment, such that it may actually be difficult to categorise Nigerian women using the framing of deceived and consenting. PNG6 (LEADS-Nigeria) affirms that it is erroneous and misleading to think that Nigerian women moved abroad in contemporary times may not be deceived, PNG5 (UNODC-Nigeria) stresses that there is no clear cut way of identifying women who are deceived or not deceived because different conditions may apply at the point of recruitment, movement and arrival in Italy. Hence, PNG6 notes that even when the women pay to be moved into Italy, the reality is that they may still be deceived in some other way and ill-treated at the destination country. PNG6 supports her position with a reported case of trafficking for which her organisation was contacted sometimes in 2008:

... recently I know that they take some of these women through Cotonou ... not too long ago somebody called me from Cotonou to say that there are some Nigerian women somebody had locked up in a hotel room and left there. And that one of the girls (I don't know if she was trying to escape or look for food) took the risk of climbing down the hotel balcony and it was the shouts of the other women looking down from the window that attracted the hotel management who then called the police.

Towing PNG6's line, PNG16 (NHRC) emphasises that Nigerian women moved into prostitution in contemporary times may not necessarily be deceived with respect to the nature of job that they are being recruited for, but they may be deceived in other material respects, such as the conditions under which they are be made to work as prostitutes. But according to PNG19 (NTA)

Most Nigerian women agree to migrate to Italy without understanding the full implications of what they are getting into. Look at the recent cases of Nigerian women trapped in Mali en route to Europe, some of whom have been deported, and when you interact with these women they tell you they were told that they were going to work as nannies, hairdressers, all kinds of jobs but not prostitution...

With respect to the claim that some women employ the services of recruiters to facilitate their movement into Italy, the possibility of exploitation in such cases as the hypothetical example of Asabe in the previous chapter attempts to illustrate, reveals the complexity of the intersections of human smuggling and trafficking. PNG5 (UNODC-Nigeria) states that the possibility of Nigerian women employing the services of another person to move them into Italy underscores the necessity of incorporating the Smuggling Protocol into the body of law.

The other issue is, if most of the women moved into prostitution are constrained by economic factors, such as poverty, the question then is how many Nigerian women can afford the services of a smuggler? Because according to a 2012 report by the British Council, Nigeria most Nigerian women live in rural areas and work in the agricultural sector where their labour is unpaid and men are five times more likely to own land. Nevertheless PNG6 (LEADS-Nigeria) and PNG21 (ILO) suggest that even when the women, or the parents of the women, pay to facilitate their movement to Italy, the women still depend on the facilitator to assist them to settle down in Italy including support with lodging and job hunt. They therefore contend that such women may still not escape being exploited through debt bondage.

6.2.4. Debt Bondage as a Form of Coercion

Although the Trafficking Protocol is silent on the issue of debt bondage, the NAPTIP law recognises it as part of the ‘means’ element and puts it on the same footing as deception and coercion. The nature of the movement of Nigerian women for prostitution is closely tied to the institution of debt bondage. Unfortunately, the NAPTIP law did not define the phrase, but the article 1(a) of the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956 defines debt bondage as

“..., the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;”

A characteristic feature of the recruitment and movement of Nigerian women into Italy for prostitution is that they are frequently moved under debt bondage. Therefore debt

bondage is a defining element in the movement of Nigerian women for prostitution in Italy and may also complicate the attempts to distinguish trafficking from human smuggling on the one hand and slavery on the other hand. It is important to state that debt bondage should not be confused with fees paid by migrants to the smuggler. To differentiate human smuggling from trafficking using the presence of exploitation, suggests that while migrants may be made to pay higher cost for the transaction of moving them across international borders, if such payment is made based on an express or implied agreement and in the absence of anything to the contrary, such payment cannot on the face of it, be deemed to be exploitative. For anything else to count as exploitation in such a case as to amount to trafficking, there must be some other things that suggest the existence of exploitation. Thus McCabe (2008) has argued that where a smuggled person is exploited beyond the smuggling fee, that is capable of transforming the relationship from smuggling to trafficking.

But according to PNG2 (HRM) and PNG3 of the Nigerian Bar Association (NBA), these differences are theoretical and may differ greatly from what trafficked and smuggled persons experience in reality. PNG3 is of the view that the fact that people employ the services of a smuggler does not mean that they cannot be exploited as they may be made to pay unusually high fee for a service that would have ordinarily cost less. But other participants disagree with the position of PNG2 (HRM), and PNG3, some participants argued that the fee paid by a smuggled person makes the transaction a business agreement and in the words of PNG14 ‘... *the smuggled person may pay higher fees than usual but in the absence of force or coercion it is simply a business deal*. However, PNG14 and PNG21 (ILO) affirm that it is common for some recruiters not to inform the women of other expenses which are then introduced in Italy where the women do not have a choice but to pay such additional expenses. In such cases, they posit that such transaction moves from the realm of smuggling to trafficking. But PNG2 stresses that there are some arrangements that may not amount to debt bondage. According to him, where a woman is moved with an understanding between her and the recruiter that the recruiter will bear the travel expenses, and the woman will reimburse such expenses through instalments from her wages, it will not be debt bondage if the conditions of the agreement or the

repayment plan are mutual, if reasonable deductions are made pursuant to that agreement and the debt is not inflated. This is similar to the earlier example given by PNG4 (WOTCLEF) and like that example there are a lot of variables to be considered in the transnational migration of people facilitated by another person. And oftentimes there are intricate issues that may need to be analysed before a position can be taken either way.

According to PNG21 (ILO), PNG7 (NAPTIP), PNG5 (UNODC-Nigeria) and PNG6 (LEADS-Nigeria), debt bondage is making the practice of recruiting Nigerian women for prostitution one and the same with slavery. PNG2, in particular, argues that it may not be slavery in the traditional sense but because it involves debt that cannot be paid off in a short period of time and the person is unable to disengage from such a relationship until the debt is paid, that makes it slavery. These participants claim that some of the women do not even know about the debt until they arrive in Italy, when they realise that the euros and dollars they wanted to earn will go into repaying a 'sponsorship fee' which the recruiter may keep inflating so as to elongate the period of the debt bondage. As to the amount of debt that Nigerian women moved into prostitution are frequently made to pay in Italy, PNG7 (NAPTIP) and PNG21 (ILO) put the amount in the range of €55,000 – 70,000.

PNG7 (NAPTIP) paints the picture of debt bondage thus:

A typical example of debt bondage is when a woman agrees to repay what she believed are travel costs, a relatively small amount of money which is often stated in naira so that it does not appear too much to her. Assuming that the woman agrees to go to Italy to work as a prostitute to repay the travel costs, assuming too that she in reality earns one hundred euros a day and it is all taken. Aside from that she is made to service more men than usual and even the extra money earned by those longer hours is taken from her and the debt is ever increasing. In the end it takes the woman 3 to 4 years to pay off the debt, except, with God's help, she is rescued.

PNG13 (NHRC) states that even if a woman agreed to be moved to Italy to work as a prostitute, the woman would have imagined that *'...to use her body, for instance, she wants to use it for her own benefits and not for you to use your body and somebody else collects the fruits of it.'* He, however, raises the issue that an agreement to move women into prostitution is illegal under Nigerian law, so that a

recruiter cannot argue that the woman agreed to it. This thesis contends that the practice of making the women work under debt bondage makes it synonymous to the slavery institutions prohibited under the 1956 Convention.

Contrary to the claim that Nigerian women in prostitution in Italy, especially Edo women, remit huge sums which are used to erect fanciful houses in Benin city (Okojie, 2009), PNG7 (NAPTIP) and PNG21 (ILO) point out that the possibility of women doing that within a short period after they are moved into Italy is not realistic because in the absence of arrest and deportation or even death it takes the women about 3-4 years to pay up the debt. And until the women have finished paying up such debt they are unable to do anything for themselves, PNG7 and PNG21, therefore, dismissed such position as sensational claims and unsupported by verifiable evidence.

PNG20 (NIS) offers another explanation of why the movement of Nigerian women to Italy may not yield any quick monetary benefit to her family. PNG20 states that in recent times, due to increased security checks at the airports and the new processes of obtaining Nigerian passports, it has become increasingly difficult to move such women by air and the movement by the land route comes with different challenges, the least of which is that it takes much longer to arrive in Italy before the women can start making money. Secondly, in the event the women survive all the perils of travelling by the land route, their irregular status in Italy makes them highly dependent on the recruiters for survival thus increasing the vulnerability of the women to exploitation. Thirdly, the women are given a target of the amount to remit to the recruiter on a daily basis to meet the repayment plan, and until the debt is fully paid the women do not have any money of their own.

As to the source of the remittances that are generally credited to Edo women in prostitution in Italy, PNG7 (NAPTIP) suggests that such remittances can be traceable to former victims turned recruiters and other Nigerians in the diaspora who may be involved in different criminal activities including trafficking, smuggling financial crimes. Recruiters sometimes make agreements with some of the women moved into Italy,

empower them with funds and send them back to Nigeria as bait to recruit unsuspecting victims. The women are often made to do this in exchange for their freedom. PNG7 (NAPTIP), PNG6 (LEADS-Nigeria), PNG14 (IOM-Nigeria) and PNG21 (ILO) affirm that it is not uncommon to hear of women who were former victims of trafficking returning to Nigeria to organise parties and other social events which are used as a platform to show off 'their new status' and at the same time a recruitment strategy for new entrants.

The other issue connected with making remittances from prostitution in Italy, as explained by PNG7 and PNG21, is that recruiters who recruit women who are related to them are able to hold such women under debt bondage without raising any suspicions because of the unregulated fostering and extended family system practiced in Nigeria, as earlier explained by PNG6 (LEADS-Nigeria) and PNG17 (ABU). According to PNG7 (NAPTIP) recruiters often use strategies that will not raise any suspicion from the ordinary person, thus the participant explained that it is not uncommon for recruiters to intermittently send meagre sums to the family of the women in Nigeria allegedly from the woman. And because of the greed of such parents such remittances is sufficient evidence that their daughter is doing well.

6.2.5. Fear, Threat and Actual Violence

You refuse to do it, but in the end you have to accept reality. Yes, you can run away, but where do you go? You want to talk, but who do you talk to? You are totally confused. I cried constantly for five days ... they put me on Tarquin Street in Rome.' – Source the Swedish Museum of World Culture brochure on trafficking cited in Prina (2003:38)

Aside from the issue of deception and debt bondage, PNG16 (NHRC), PNG6 (LEADS-Nigeria) and PNG13 (NHRC) are of the view that Nigerian women moved into prostitution are frequently reported to be subjected to both physical and sexual violence, such as rape and physical beating. According to PNG7 (NAPTIP), PNG21 (ILO), PNG16 (NHRC), PNG6, PNG13 (NHRC) and PNG1 (NAPTIP), the threat of violence and actual violence is used to enforce compliance and used to subject the women moved into prostitution to fear, so that the women become too petrified to opt out of the agreement.

For instance, PNG7, PNG16 and PNG6 mention that one of the consequences of defaulting on the repayment plan is physical abuse that may take the form of beating or the denial of some basic things such as food. PNG19 (NTA) while sharing his experience of undercover trailing recruiters and smugglers, states that the level of violence that women are subjected to is so severe that many of them die while in transit. According to PNG6 (LEADS-Nigeria),

... When the women are unable to meet up with the repayment plans, they and their families are threatened. They cannot even easily sever themselves from the traffickers because either they are holding the women's travel document or they can report the women as illegal migrants, so it is only in very few cases that these women are able to take the bold step to report what's happening to the Italian authorities. And the fact that they will be deported back to Nigeria constrains some of them from reporting to the Italian authorities. When they are deported they cannot come here to announce that they agreed to go to Italy to work as prostitutes or that they were actually working as prostitutes because even that also comes with a price.

With respect to the use of threat or actual use of harm, it is doubtful if recruiters make a distinction between Nigerian women who paid for their migration and those coercively or deceptively recruited. This is because most of the women deportees according to PNG7 (NAPTIP), including those intercepted in transit countries are frequently moved into Europe under the *juju* oath ritual, debt bondage and subjected to different forms of abuses.

Also, PNG6 (LEADS-Nigeria) and PNG16 (NHRC) state that from what they know of the subject, it is a journey characterised by threat, violence - especially sexual violence, intimidation and the deprivation of liberty which remains a regular occurrence throughout the relationship between the women and their recruiters. Thus PNG7, PNG16 and PNG6 aver that it is the exploitative experiences of the women during the different stages that make the movement of women into prostitution a human rights' violation issue.

With respect to the deprivation of liberty, some participants argue that the degree of limitation on the freedom of movement of the women may vary depending on the recruiter. While PNG7 is of the view that the women are free until they are moved out of Nigeria, PNG6 states that there is no uniform approach on this and cites instances

of women reportedly denied their liberty whilst still in Nigeria. According to PNG6, women moved into prostitution also suffer deprivation of liberty within Nigeria but outside the immediate environment where the women were recruited. The participant cites an example of when her organisation was alerted of a suspected case of trafficking where women allegedly recruited from another location were moved into Kaduna *en route* a foreign country through either Sokoto or Katsina. States, Northern, Nigeria. The participant states that by the time they got to the house where the women were allegedly kept the women and their recruiters have moved to another location. This example affirms that women moved into prostitution are highly mobile, another strategy used by the recruiters to deny the women any form of social network.

On the issue of violence, whilst most of the participants were not in doubt that Nigerian women moved into prostitution suffer varied forms of violence, they differ on the timing. To PNG6 (LEADS-Nigeria), PNG16 (NHRC) and PNG21 (ILO), the commonest violence that the women are subjected to is sexual violence, such as rape, and the exploitation of the women in prostitution and beating. They, therefore, posit that women moved into prostitution do not start to experience sexual violence until they are moved beyond the borders of Nigeria. To these participants, rape is used by recruiters for different purposes, such as to enforce compliance and punish disobedience. While PNG7's (NAPTIP) account agrees with that of PNG6, PNG16 and PNG21, to the extent that rape is used as a method of punishing the women and enforcing compliance, PNG7 postulates that sexual violence is used to degrade the person of the women, making them lose their self-worth and thereby preparing them for a life in prostitution. PNG7 also explained that it is not uncommon for women to be exploited in prostitution for the benefit of the recruiter's agent (trolleys) while in transit. And when they are pregnant or sick, the women are abandoned because they are of no immediate value to the recruiters in that state.

Both PNG7 and PNG20 (NIS) state that the likelihood of such suffering is hidden from the women during the recruitment phase, so that the women are never told that they will be raped or made to sell their sexuality for the benefit of another, or that they may

be sold like commodities in the market. PNG2 (HRM) and PNG3 (NBA) affirm that they know that women moved into prostitution sometimes experience different forms of violence such as being 'badly beaten up', and in some cases the women die without a trace.

PNG5 (UNODC-Nigeria), on the other hand, is of the view that violence begins from the time of the *juju* oath process. According to PNG5, the ritual process which sometimes involves the use of unsterilised sharp objects to make incisions on the women's bodies is nothing short of violence. Indeed during this stage as well sexual violations may also occur, a good example that supports that is the case of *Attorney General of the Federation v Ganiyu Ishola* where the *juju* priest, in the name of performing the *juju* rites and administration of the oath on the victim, detained the victim for 40 days and sexually abused her during that period. This suggests that some Nigerian women may even be subjected to sexual violence before they are moved out of Nigeria.

6.3. The Role of *Juju* Oath in the Movement of Women for Prostitution

One defining feature in the movement of Nigerian women for prostitution is the use of *juju* oath. This thesis seeks to establish if there is any correlation between the oath and coercion or voluntariness of the women to migrate to work as prostitutes. According to PNG5 (WOTCLEF), the traditional religious practice as represented in the *juju* ritual intertwines with the everyday religious and cultural life of the Nigerian society such that before the advent of Christianity and Islam, the traditional religion was largely based on *juju* practice which includes the worship of spirits. PNG5 states that some Nigerians, irrespective of their education and status, remain ardent believers of this traditional religion, and even some Nigerians who have embraced Christianity and Islam also live in the consciousness of the effect of the worship of spirit beings.

Some participants note that previously it is not uncommon for *juju* adherents to seal commercial agreements, especially the sale of land with *juju* oath to ensure that the other party does not default on the agreement. At other times *juju* oath is used to formalise marriages or request for children from fertility gods and when such children

are born, they are celebrated before the *juju* shrine and dedicated to the gods. *Juju* is also used to deal with evil spirits perceived as responsible for different calamities in a community. Thus PNG5 tries to explain the reason where recruiters use the *juju* oath in agreements as an attempt by the recruiters to protect the inviolability of the agreements. This is because it is commonly believed in Nigeria that person submits his/her affairs to the gods through an oath serious consequences attached to any violation of whatever is agreed. PNG7's (NAPTIP) account marries with the latter part of PNG5's description of the *juju* oath ritual and according to him it is in that sense that recruiters use the oath to recruit the women. The recruiters know that the average Nigerian lives in fear of the consequences of *juju* practice, especially the reality of instant punishment, some of which are believed to be irreversible. PNG7 explains further that this fear is compounded by the fact that only the *juju* priest who administered the oath or other persons with higher spiritual powers can reverse such punishments. The *juju* priests are seen as the curators of spiritual power who are able to either appease the spirits on the behalf of people or invoke curses that could lead to death or illnesses such as insanity on anyone who incurs the wrath of the spirits. The *juju* oath according to PNG7 of NAPTIP typically takes the following form:

Traffickers and the *juju* priest usually collect something from the women's body parts like hair, pubic hair, nails or sometimes body fluid, especially blood, which are then used to hypnotise the women. We have some psychiatric cases amongst the returnees. One cannot say whether the charm is working or not but the psychological problem is of not being able to live up to the terms of the oath. Even in our agency here there have been cases where we had to bring *juju* men to weaken the oath administered on the women in order for them to regain their sanity. The *juju* issue is not a fake. The fear of it is real to the women.

What then is the effect of the oath on the recruitment process? According to PNG7, PNG8 (CYPF), PNG6 (LEADS-Nigeria), PNG21 (ILO), PNG9 (NA) and PNG20 (NIS) claim that Nigerian women moved into prostitution are subjected to the *juju* oath in order to prevent them from changing their mind. According to PNG7, *'the recruitment pattern includes...of course the juju oath which is used as a control measure to make sure that the victim abides by the agreement.'* PNG7 states further that in the course of his work he has met experts on human trafficking abroad who

claim that unlike other women moved into prostitution in Italy from other regions of the world, who are constantly monitored or threatened to make their returns to the recruiters. *'...the Nigerian women willingly bring their money to the recruiters because of the fear of the consequence of breaking the oath they have taken. The oath is a control mechanism used to control them psychologically and by the fact that the women believe they will be haunted if they default.'*

There are different accounts of how *juju* is used to recruit and keep Nigerian women in continued exploitation. In 2010, for instance, when members of a trafficking ring specialising in the movement and prostitution of trafficked women in Wales were tried and convicted, it was found that while women who moved from other parts of the world voluntarily worked as prostitutes, the experience of Nigerian women was described as follows:

But many of the trafficked women and girls lived in fear of *juju* oaths, made during 'terrifying and humiliating' rituals they were forced into by traffickers. One was forced to sleep in a coffin to 'put the fear of death' in her. Menstrual blood was drawn into a padlock, locked, and thrown in the river to signify their lives were in the hands of the river goddess, said investigators. Live chickens were slaughtered and the victims made to eat the raw hearts. Fingernail clippings and pubic hair cuttings were taken, and retained, to *'instill the fear of God in them'* and show they could be *'metaphysically'* reached wherever they were. Often the girls were naked, and one was cut all over her body with blades, said investigators (BBC News, 2010).

Whilst not denying that Nigerian women moved into prostitution may be subjected to the *juju* oath ritual, some participants like PNG2 (HRM), PNG3 (NBA), PNG16 (NHRC) and PNG13 (NHRC) are of the view that the issue of the *juju* oath is neither here nor there because it relates to metaphysical issues which may be difficult to prove, and because the women are unable to prove that they were forced to take the oath it is questionable if it has any effect on the voluntariness of the women to migrate.

Similarly, PNG9 (NA) and PNG8 (CYPF) argue that it is the greed of the women that made the women submit themselves to the *juju* oath. Their argument is premised on the idea that the women being Nigerians cannot claim ignorance of the consequences of accepting to take part in the *juju* ritual. Nevertheless, PNG7

(NAPTIP), PNG6 (LEADS-Nigeria), PNG20 (NIS), PNG5 (UNODC-Nigeria), PNG1 (NAPTIP) and PNG11 (NIS) question the foregoing and posit that it is wrong to assume that the women are aware of the truth of the agreement as at the time they agreed to take the oath. This latter group is of the view that women will not knowingly agree to the *juju* oath ritual and agree to agreements that puts them under onerous obligations.

In addition to the psychological control over the women, the *juju* oath is also used as an instrument of fear. PNG19 (NTA) again, in reference to his journalistic investigation into irregular migration when he travelled under the guise of potential migrant with a group of other Nigerians from Lagos through Lome into Mali, he describes the *juju* oath as *'... too ritualistic to expect that the women remain normal after undergoing that experience'*. He explained further that what he saw during the journey traumatised him such that he had to discontinue as he could not continue with the investigation. This participant also states that he has made international trips to cover other human trafficking events involving Nigerian women, and that the condition of some of the women in Italy particularly leaves him with the conclusion that the women submitted to the inhuman conditions in which they were found due to the fear of the oath.

According to PNG21 (ILO), *'the oath process is to make the women perpetually tied to the trafficker. Traffickers also use it to keep the women from disclosing their identity and that is why some of them don't want to talk, because the women are also made to take the oath in order not to disclose the identity of the trafficker and this is why it is also known as oath of secrecy ...'* PNG21 explains further that Nigerian women moved into prostitution under the oath are often unwilling to share their experiences or reveal the identity of their recruiters.

In line with PNG21's position that the *juju* oath is also designed to protect the identity of the recruiter, one of the in-house lawyers of NAPTIP who prefers absolute anonymity states that the *juju* oath is a major challenge to effective prosecution of trafficking cases in Nigeria, because the women who would have been star witnesses

are often unwilling to testify. For instance, in the case of *Attorney General of the Federation v Ese Osagie (unreported)*. NAPTIP had reasonable grounds to suspect that the victims had been trafficked, but NAPTIP was unable to get the affected women to testify due to their fear of breaking the *juju* oath. And in the end the accused was discharged.

But PNG4 (WOTCLEF) disagrees with the foregoing:

The purpose of the *juju* oath is no different from what it had always been used for. It is not meant to charm (harm) the women but to seal the contract, which is traditionally acceptable in Nigeria. Yes it also instils fear in the women but only to the extent that they keep to their own side of the bargain. An aspect of the *juju* is also to make the women attractive to a male client so that any man who has had sex with the women can keep going back to them. Why is no one talking about that? Don't misunderstand me because I can see the look on your face, I am a woman and having worked with victims of human trafficking I don't deny that the women suffer abuses and are exploited. But I have heard people say that ah it is the oath that kept the women in a condition of slavery. And I would usually ask them if the women were forced to take the oath. Like I have said before, the oath is simply a way of protecting a mutual agreement between two people.

When asked if she was aware that the oath constitutes a major challenge to NAPTIP in the prosecution of suspected traffickers, she explained thus, '*If you enter into an agreement under oath that no matter what happens you will protect the identity of the other person, why should you now go back on your words?*' PNG4 argued further, '*I am not saying the women who are moved into Italy for prostitution are not trafficked but what I disagree with is that the women are forced into prostitution through the oath.*' PNG4 continued,

Maybe I am not explaining it well. Let's say that a man approached a woman to offer her a job in Italy. Again I am not saying the man may not have lied to the woman about the nature of the job, but let's assume that the woman agreed to go and work in Italy. Then the man promised to pay all the expenses to take the woman to Italy, which the woman also promises to repay. Again I am not saying it is that straight forward but let's just tell the story without reading meanings to it. Then the man in order to protect his investment proposes the swearing of an oath, both to assure the woman that he will take her to Italy and to ensure that the woman will pay his money back. What is wrong with that? Instead of simply blaming everything on the man, what made the woman believe the man to the point of agreeing? It is greed and not force.

According to PNG8 (CYPF) some of the women sometimes know what they are walking into but still does not understand why they accept to take the oath, '*... but why take an oath when you know what you are walking into? ... they still take the oath but ... most of these girls actually walk into these things with their eyes wide open.*'

Whilst it is not impossible that some of the women may be driven by greed, the issue of greed cannot be examined in isolation. It is therefore important to note that to properly determine whether the women were greedy or not, greed should be examined in the context of the information provided by the recruiters to gain the women's agreement to migrate. For the women to be willing to take the kind of risk involved in irregular migration and to work in a foreign country against the backdrop of the information that propelled them to take such a decision. The danger in PNG4's example is that what may appear to be a simple commercial transaction to be moved into Italy to work from which deductions can be made to repay the cost of migration can easily develop into an exploitative situation through debt bondage. On the face of it, if the recruiter keeps to the agreement as explained in PNG4's example and nothing more, that will be a valid agreement in which case the means of migration will determine whether such agreement is human smuggling or regular migration. But the introduction of anything contrary to that initial agreement especially when such new terms are unilaterally made in the favour of the recruiter, it removes the agreement from the domain of commercial agreement to exploitation and thus trafficking. Moreover there is no guaranteeing that exploitation even at a minimal level is not bound to occur in such a relationship.

The implication of the position as suggested by both PNG8 and PNG4 (WOTCLEF) is that the *juju* oath should not be classed in the same category as deception and coercion because the women ought to know the implication of taking the oath. And since the women willingly agreed to take the oath they are bound by the consequences of it. Whilst there is no contesting that the women voluntarily submitted themselves to the oath, the effect of the *juju* oath changes the permutation of the agreement because the oath constrains the women from being able to freely

terminate the relationship. PNG7 NAPTIP, therefore, advances the position that since the administration of the *juju* oath is the reason why most of the women are unable to change their mind about the agreement, it nullifies the women's freewill. Case law on the effect of *juju* on transactions is not very rich but available judicial decision in that respect supports PNG7's position. In the case of *State v. Okezi*, the accused was a native doctor who prepared some charms (*juju*) for the deceased to render him bullet-proof. The accused at the invitation of the deceased tested the charms by firing a shot at him. The accused shot the man in the chest and he died. The invitation (consent) of the deceased and the *juju* did not avail the native doctor, who was accused and was consequently convicted of murder.

6.4. Consent under the Nigerian Anti-trafficking Law

Prior to 2003, Nigeria did not have a substantive anti-trafficking legislation, but the Criminal Code (CC), applicable in Southern Nigeria, and the Penal Code (PC), applicable in Northern Nigeria contain relevant provisions that may also be used to counter potential trafficking issues. And although the issue of women's trafficking for prostitution has been in the public domain since the 1980s there was no attempt to address the problem with the existing penal provisions. The first national attempt to tackle the problem in Nigeria started when Nigeria signed the Trafficking Protocol on 13 December 2000, ratified it on 28 June 2001 and by 2003 became one of the first African countries with a national anti-trafficking law - Trafficking in Person (Prohibition) Law Enforcement and Administration Act, 2003, as amended in 2005 (the NAPTIP Act).

The NAPTIP Act, under s.1 established a specialised agency on human trafficking, NAPTIP. s.64 of the law says:

Trafficking or Traffic includes all acts and attempted acts involved in the recruitment, transportation within or across the Nigerian borders, purchase, sale, transfers, receipt or harbouring of a person involving the use of deception, coercion or debt bondage for the purpose of placing the person whether for or not in involuntary servitude (domestic, sexual or reproductive) in forced or bonded labour, or slave-like conditions.

It is interesting to note that the NAPTIP definition, whether by omission or commission, defined trafficking without making reference to consent or prostitution.

But the definition did make reference to some of the consent-nullifying elements listed in the Trafficking Protocol, like deception and coercion. But with respect to migrating for prostitution s.16 provides that:

any person who organizes or promotes foreign travel which promotes prostitution of any person or encourages such activity commits an offence and is liable on conviction to imprisonment for ten years without an option of fine.

The section appears to criminalise migration for prostitution or related activity. Similarly s.23, which relates to slave trafficking, provides that 'any person who imports, exports, removes, buys, sells, disposes, traffics or deals in any person as a slave or accepts receives or detains a person against that person's will as a slave, commits an offences and is liable on conviction to imprisonment for life'. s.24, on the other hand, contains a slightly wider provision on slave dealing - servitude as a pledge or security for debt, held or treated, sold or transferred for debt, slave-holding and a contractual agreement for any of the purposes listed under the section. Any person who is involved in any of these is deemed to have committed an offence and is liable upon conviction to life imprisonment.

With respect to the issue of consent s.64 provides that, '... debt bondage for the purpose of placing or holding the person whether for or not in involuntary servitude', when read along with s.16, which criminalises migration for prostitution, makes the requirement of consent under the Trafficking Protocol a matter of little importance under the Nigerian anti-trafficking law. Further, s.64 defines a slave as a person held in bondage whose life, liberty, freedom and property are under the absolute control of another person. The section substantially appears to provide for the same offence, albeit using slightly different wording. Nevertheless, the cumulative effect of the sections is that it equates movement of women for purposes of prostitution to slavery.

As to why Nigerian women do not run away from their recruiters, PNG7 (NAPTIP) claims that unless people understand the subtle psychological controls that are exercised over Nigerian women moved into prostitution, they may by no means understand the reason why the women stay on in an the relationship in spite of the

abuses they suffer. But can the refusal to walk away be interpreted as consent? PNG5 (UNODC-Nigeria) states that,

... when they refuse to work as prostitutes, they get worse treatment from the traffickers. But when some of them find that they can suffer fewer abuses and probably live by simply complying with the dictates of the trafficker, and they submit to such treatment, that is not consent.

PNG6 (LEADS-Nigeria), referring to the earlier case of women held up in Cotonou, also argues that '*... if these women consented to travel abroad to work as prostitutes why lock them up in a hotel room in a foreign country?*' PNG6, without focusing on the morality or otherwise of prostitution as sex work, explains that agency pre-supposes that the woman as adult possess the capacity to make an informed decision. But that may not be true in most cases, according to PNG6,

Assuming that these women agreed to go to Italy to work as prostitutes, then agency is only important to the extent that prostitution is considered a trade or profession, because when you indulge in a trade or profession you are supposed to go into it fully with your eyes opened and have knowledge of the consequences of what you are going into or what it entails. Therefore, agency is really important because if you go with your eyes open and you know what it entails and what is expected of you and you still consent, with all the risks attached, you will have only yourself to blame. If women have freely consented to be moved into prostitution, it means that they have taken prostitution as a vocation and so they are prepared for it and willing to take steps to protect themselves against the hazards of the trade and possible exploitation.

The implication of PNG6's assumption is that valid consent will remove the act from the purview of trafficking law and make it a commercial transaction, which may be a human smuggling case depending on the facts of each case. But when that assumption is examined in the context of the provisions of the NAPTIP law which proscribes foreign travel for prostitution, it becomes what PNG13 (NHRC) refers to as '*...entering into an illegal contract, which are generally unenforceable contract.*'

An illegal contract is a contract whose commission involves the commission of a legal wrong. And because the NAPTIP law criminalises the organisation of foreign travel for prostitution, any agreement to do that will amount to an illegal contract. Whilst such position does not exclude the rational choice and agency of an individual to

enter into such contracts, the rights and remedies of the parties to such an agreement will be affected. “[W]here a contract is made in contravention of some statutory provision then, in addition to any criminal sanctions, the courts may in some cases find that the contract itself is stricken with illegality ...” - Megarry J in *Curragh Investments Ltd v Cook* [1974] Illegality of the transaction will also frustrates any civil action in tort against the recruiters or traffickers.

PNG13 states further that the scope of consent with respect to the movement of women for prostitution needs to be properly defined, because there is no sense in consenting to be moved to another country to work, whether as a prostitute or not, only to have wages being received by someone else. PNG13 therefore argues that

... consent to travel or be helped to travel does not mean consent to exploitation, so we need to really define the scope of consent. Does it run through the entire experience of a trafficked person or is it limited to consent that may now open the person up to an avalanche of human rights violations? These are things that we need to look at ... You cannot consent to a human rights violation. Consenting to trafficking is like entering into an illegal contract, and you cannot agree to enter into an illegal contract.

Thus, PNG13 examines trafficking from the perspective of when exploitation begins. He argues that exploitation in the context of migration amounts to human rights’ violations which a woman cannot validly consent to. In the words of PNG13

Consent cannot justify a human rights violation, because you may also be consenting to something for which you don’t really know the full purport and implications. For instance if someone wants to travel to Italy, they tell them they want to give them jobs and better living because the conditions we have here are quite harsh for people to survive. So it is always attractive to say maybe if you go over there things will be better off in terms of work and so on. But does that now justify the kind of treatment along the way, the exploitation they go through?

PNG7 (NAPTIP) also mentions that the occurrence of exploitation in the destination, such as debt bondage or deprivation of liberty, invalidates prior consent to migrate. TAB (NIS) examines lack of consent from a different perspective, PNG20 (NIS) using the earlier example of how some of the women who work in beer salons and restaurants patronised by top government officials and business executives are

moved into prostitution. According to PNG20 the relationship that exist between such women and the proprietors of such business is already fraught with unequal balance of power, thus PNG20 states,

‘Consent in this context is very debateable. Some of the young women my men have interrogated in some of our investigations do not know better. They do not know that when the madam arranges for them to go on a trip with a ... for instance, that they don’t have to go. The women don’t even think because they believe that they are bound to do the will of the madam. And this is why some of them do not report to law enforcement agents. The inaction of the women may also not be unconnected with fear, because knowing the calibre of people the madam work with, the women may be too afraid not to comply with the orders of the madam, and I won’t interpret that as consent.’

But PNG2 (HRM) raises some conceptual issues on the place of consent in the movement of Nigerian women for prostitution:

For me, the issue of consent can be looked at from three perspectives: first from the perspective of whether it is possible for a parent to give consent on behalf of a daughter to be trafficked. My answer is no. Whether the person is a minor or an adult, the parent cannot give consent on their behalf to migrate to work as a prostitute. In the case of adults, let the women do it themselves. Why involve the parents? And in the case of children, that is against the law because it amounts to child labour and exploitation, which is a gross human rights violation.

The second is whether after being trafficked, a person can give consent in a foreign country to cover conditions that were not disclosed to her before leaving Nigeria. Again my answer is no, they can no longer give consent because they are already held hostage or facing a situation that may lead to suffering or arrest as an illegal immigrant, deportation or death. It is impossible to give valid consent at that time and the consent may appear voluntary but in the true sense of the word it cannot be voluntary, because the situation under which the consent was given makes it impossible to give genuine consent.

The third is whether it is possible for a woman of her own volition to leave the shores of this country and go to a foreign country to engage in prostitution as work. And my answer is yes. Despite the fact that there is poverty and unemployment, the moment you have attained the age of majority and out of your own volition you leave the country in order to go and engage in prostitution, then you cannot set up the issue of poverty and unemployment as consent-nullifying variables.

Following PNG2’s reasoning, therefore, familial consent is no consent at all and is not tenable. Unlike some respondents, who claim that a woman cannot consent to

migrate to Italy to work as a prostitute - either because Nigeria criminalised prostitution or because of the view that prostitution is an institution that degrades women. PNG2 posits that an adult woman can migrate to Italy to work as a prostitute so long as such decision is made voluntarily. He argues that adult women can travel to work as prostitutes but they must be ready to bear the consequences of their action.

The other interesting position put forward by PNG2 is the issue of consent-nullifying elements. According to PNG2 '*... for consent to be valid it must not be tinted with the issue of deception or human rights violations such as deprivation.*' In that respect where a woman though poor, voluntarily agrees to migrate for prostitution such woman cannot set up poverty as a form of coercion. According to him,

At the moment, poverty can push people to do what they will not ordinarily do, and poverty as a variable can compel you out of necessity to do something you would not ordinarily do. It is a variable that will have to be looked into, but within the definition of the law I think that it must be a juristic person that moves one person from one country to another, but not poverty.

Whilst PNG2's position is in consonance with the liberal feminist position on the right of choice and agency, this position ignores the possibility of exploitation and how best to respond to it, especially with respect to where the women driven by poverty voluntarily consent to migrate but are later exploited in prostitution. The Nigerian position is analogous to the radical feminist perspective on prostitution that does not conceive of prostitution as a consensual act. Thus, the position does not conceive of a woman who, in PNG2's earlier analysis, 'of her own volition' migrates to work in Italy as a prostitute.

For purposes of criminal prosecution, PNG17 (ABU) identifies that consent is very problematic because according to him, to effectively prosecute a suspected trafficker the woman must not be seen to have consented. PNG17 therefore states that the other issue that makes consent a contentious requirement is that the women moved under *juju* oath are often reluctant to testify thus it is difficult to prove lack of consent. PNG17 further explains that it may even be difficult to secure a criminal conviction

upon the uncorroborated testimony of a woman who is alleging trafficking. It is not just that corroboration may be difficult according to one of the in house lawyers of NAPTIP; sometimes it may be impossible to get the women to testify against the suspected traffickers. The lawyer cites the example of the case of *Attorney General of the Federation v. Monday Aikhomu*, where according to him the accused was arrested in Kano in 2004 in the company of 3 women en route to Zinder in Niger Republic for onward movement to Spain. The accused was charged to court but the trial was stalled because the women refused to appear in court to testify and the case was eventually dismissed.

Closely connected to the challenge of consent in relation to prosecution of trafficking, PNG18 of the British Council Nigeria, PNG15 (FIDA) and PNG13 (NHRC) are concerned that if valid consent is imputed to the women moved into prostitution, that may hamper the effective prosecution of suspected traffickers and the trial may turn against the women to prove lack of consent. Accordingly, PNG7 (NAPTIP), PNG15, PNG18, PNG13 and the in-house lawyer of NAPTIP state that the position of the NAPTIP Act, as it relates to the issue of consent is the presumption that the women are coerced. With this practice, it is not just that the suspected traffickers bear the burden of proving consent, the women are deemed to be victims and this makes them relevant witnesses for the prosecution. PNG18 and PNG13 equate the approach of the NAPTIP Act to the practice of 'plea bargaining.' According to them even if the women are complicit in their migration abroad but because the prosecutor needs relevant witness to prosecute suspected traffickers, it is better to ignore the lesser crime of foreign travel for prostitution to effectively prosecute trafficking.

Bruch also raises the prosecutorial challenges associated with framing of consent in trafficking of women for prostitution as one of the implications of the law enforcement approach of the Trafficking Protocol, where she argues that,

To benefit under the existing law enforcement regime... if she is a woman or a child (the primary intended beneficiaries of the anti-trafficking mechanisms). She should not be a willing victim in any sense ideally; she will be neither a prostitute or sex worker nor a voluntary migrant. She should not be interested in staying in the country to which she was trafficked on a permanent basis. If she did have the intent to migrate, it

should not have been to work illegally, especially as a prostitute. However, if she was previously 'innocent' and was then sexually exploited by her traffickers, she will have a stronger moral claim to protection. She should not be interested in bringing her own claim against the traffickers or complicit individuals, including government officials. Typically, such mechanisms are not available to trafficked persons. However, she should be willing to assist with their prosecution, including acting as a witness. If she does, then she may be eligible for additional benefits (2004:pp.36-7)

6.5. Feminist Debate and the Movement of Nigerian Women for Prostitution

This section attempts to locate the movement of Nigerian women for prostitution in the feminist debate vis-à-vis the provisions of s.52 of NAPTIP law that confers a right of civil action on victims of human trafficking. Participants differ on the legality or otherwise of prostitution and women's agency to validly engage in it. PNG21 (ILO) avoided taking a position but affirmed that the ILO's mandate and interest is from the perspective of forced and exploitative labour. PNG6 (LEADS-Nigeria) and PNG15 (FIDA), both of whom have extensive experience as women's rights activists, state that the idea of women taking up prostitution as a career option will not be of any long term benefit to Nigerian women. PNG15 refers to the liberal feminist's position '*... as a Western idea and it should not be promoted here at all*'. As to whether the liberal feminists' ideology should not be promoted in Nigeria to address the problem of trafficking for prostitution, PNG15 states '*... it is a temporary measure that will backfire... We have also heard about how much these girls are exploited when they are taken abroad and most of them are returned home with nothing to show for it*'.

To PNG6, the social, cultural and political milieu in Nigeria does not accommodate such liberal ideals. PNG6 recalled that prior to the return to democratic rule in 1999, women were nearly absent from the political arena in Nigeria, except to serve in what she referred to as the 'kitchen cabinet'. She explains that when due to women's activism especially after the Beijing conference Nigerian women:

Who dared to accept political office from states like Kano were classed as prostitutes and you know that even when a woman is career-focused or has a delay in getting married she is called a prostitute and people see that as an affront to the traditional cultural practice, even though that cultural practice is entrenched in patriarchy. But the disadvantages of going to Italy to work as a prostitute outweigh the advantages.

The position of PNG6 and PNG15 finds expression in what some African scholars call

African feminism. According to Gaie African feminism is defined as,

... the struggle of Africans to reaffirm their most valuable conceptions of motherhood as the centre of human development, and liberation from the bifurcation of humanity into gender, racial, ethnic, religious, economic, traditional, regional, national and philosophical categories (2013:206)

The difference between African feminism and what Gaie refers to as Western feminism is that whilst the latter concept is characterised by sexual orientation (Horn, 2006), by gender and the woman's body (Nzegwu, 2002), Gaie (2013) identifies *that* African feminism adopts humanity as the defining factor. These scholars argue that Western feminism, as conceptualised in the West, is in contradiction with African traditions on issues such as prostitution, which is accepted in the West and according to Gaie *'... is shoved down the faces of African communities as part of their 'liberation' strategy from patriarchal domination.'*

And this is what Crenshaw's intersectionality seeks to change when the author alleges with respect to Black women and feminist theory:

...that Black women are sometimes excluded from feminist theory and antiracist policy discourse because both are predicated on a discrete set of experiences that often does not accurately reflect the interaction of race and gender. These problems of exclusion cannot be solved simply by including Black women within an already established analytical structure. Because the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated. Thus, for feminist theory and antiracist policy discourse to embrace the experiences and concerns of Black women, the entire framework that has been used as a basis for translating 'women's experience' or 'the Black experience' into concrete policy demands must be rethought and recast (1989:140; 1991:1241)

Although Crenshaw's analysis is focused on the failure of feminist theory to address the issues confronted by black women in America, the author's analysis of intersectionality is relevant to this research. Still on the inadequacy of western feminists' ideals to capture and effectively respond to the problem of women's trafficking for prostitution, Fayemi also faults western feminists for their assumption of universality on feminists issues:

A fundamental pre-supposition underlying the above currents and which is usually held by Western feminists is that feminism is a universal agenda for action, aimed at eliminating gender hierarchies in all societies of the world. Feminism in this sense is seen as a product of universal thought, which concerns all women, irrespective of their race, social class and religion (2009:204)

In reviewing feminists' debate on prostitution as sex work and by extension trafficking for prostitution as a form of labour migration, Fayemi rejects both the liberal and radical feminists' approach to the issue and argues that:

African ethico-feminism holds it expedient to provide an ethical prohibition of the acts of prostitution and female trafficking, including all the agents involved. It is only when this has been achieved that the quest for legal prohibition, liberation and the empowerment of women can be successfully realized in Africa (2009:208)

From an African ethico-feminist perspective, prostitution and trafficking for prostitution are characterised by sexual assault, violence, deprivation and discrimination, which amounts to human rights' violations, which should be legally and morally reprehensible and therefore should be condemned. Therefore, Fayemi (2009) argues that both the women who consented and the recruiters, who he refers to as 'immoral agents' should be held responsible for undignifying acts. Fayemi (2009:207-211) supports his argument with the following two positions. First, he claims that the African ethico-feminist perspective is derived from the African communal social ethic, which conceives of some behaviour as degenerative and other behaviour as generative. Based on these ethics, Fayemi states that by African cultural values, prostitution and trafficking for prostitution are degenerative and capable of destroying the communal bond. Secondly, Fayemi argues that the normative African ethical position views prostitution and trafficking for prostitution as immoral and posits that human beings are intrinsically valuable and should therefore be treated with respect.

Fayemi's perspective glosses over the issue of consent in trafficking and conflates trafficking for prostitution with prostitution when the author states that:

Women are neither directly forced to be trafficked nor do they choose to be sold as slaves. But they do often choose to become prostitutes. Nonetheless, the attitudes of all clients towards prostitutes resemble that of master towards slaves in many respects. Likewise, that of traffickers towards the trafficked is a master-slave

relationship. Some of the reasons for consenting to and choosing to be trafficked and perhaps be a prostitute are meeting social needs, and family financial challenges, war refugees, defect in moral character, lack of education, and loose parental background (2008:203).

But prostitution and trafficking for prostitution is regarded as disrespectful, therefore *'prostitution and female trafficking are ethically wrong because they defy respectful sexual and human relations by proffering a monetary substitute for mutual desire, interests and concerns'* (Fayemi, 2009:209).

Whilst it is recognised that different people and cultures must be allowed to retain cultural values that they consider beneficial to them, there are cultural practices that discriminate against women because of their gender. Such cultures according to Gaie's (2013) opinion deny the humanity of women and should be rejected. Whilst it may difficult to contradict Fayemi's (2009) claim that African culture does not promote the exchange of women's sexuality for money, the author's position feigns ignorance of the reality of some African cultural practices that objectifies women's sexuality and forecloses women's expression of sexual desire. Or is it ethical that African women can be given out as gifts in marriage without their consent or used as objects of sexual entertainments through concubinage and polygamy yet it is ethically wrong for the same women to work as prostitutes. Fayemi's position ignores the deep rooted issues that push women into prostitution and the women's capacity to take personal decision even when such decision is to enter into an illegal business. Beyond the foregoing, the fundamental flaw in Fayemi's African-ethico feminism is that it calls for the criminalisation of women who may have been trafficked as it does not make a distinction between forced and voluntary prostitution.

6.6. Conclusion

This chapter set out to determine whether Nigerian women moved into prostitution in Italy are free agents of themselves or coerced victims. To effectively undertake that exercise the chapter examined a number of issues such as the push factors, the recruitments methods and what the different participants made of consent in relation to the recruitment and the movement of Nigerian women for prostitution. With respect to the push factors the participants offered different reasons that have influenced the

contemporary migratory flows from Nigeria. With respect to the movement of women for prostitution poverty was generally identified as having a direct or indirect influence on the choice of women to migrate. The chapter presents an interesting debate between the participants on the role of poverty as a push factor but the most interesting position is the one advanced by PNG2 (HRM) who argues that when a woman though poor makes a choice to migrate for prostitution, the woman can no longer set up the defence of poverty. The chapter argues that such a position risk conflating trafficking with human smuggling and ignores the factors that make women vulnerable to trafficking. Whilst poverty on its own should not be the reason why women migrate into prostitution, the chapter posits that a poor Nigerian woman is most likely to be constrained in other respect such as ignorance, illiteracy, amongst others. And one of the fundamental issues that this thesis advances is that poverty and greed cannot be considered independent of other issues.

The other issue that the chapter also had to examine is the recruitment pattern used to move the women. Findings as presented in the chapter suggest that some of the women may have a fair knowledge of the possibility that the job they are been recruited for may be in prostitution. The findings suggest that the women are still deceived in some way that would have fundamentally influenced the choice of the women to migrate. Thus PNG13 (NHRC) posits that consent to migrate for prostitution becomes trafficking the moment exploitation begins to occur.

As to whether women can validly consent to migrate for prostitution, participants were divided on the issue, whilst participants like PNG2 is of the view that a woman can freely make a choice to migrate for prostitution, the majority of the respondents think differently. But the basis of their dissention is not necessarily that the women are deceived rather it is that prostitution is criminalised and a woman cannot be seen to consent to an illegal contract. The idea of women not being able to consent to prostitution because it is considered a criminal activity may not be far from patriarchal inclinations that discriminate against women. If men are free to enter into illegal activities such as armed robbery, fraud and other forms of illegal activities the woman should also be deemed to have capacity to enter into such agreement provided that such agreement is made freely and the women are also willing to take responsibility

for their actions. Whilst the chapter agrees with PNG13's position on the legal effect of illegal contract, that such contract becomes unenforceable in law, unenforceability of contract does not exclude the choice of a woman to enter into such agreements. PNG2's position that the capacity to consent should necessarily go with responsibility to bear the consequences of one's action may offer a better alternative because his position promotes women's agency free of externalities.

With respect to the approach of the Nigerian anti-trafficking law on consent, findings suggest that though Nigeria did not expressly use the word consent, it used and adopted some of the wording of the definition of trafficking in the Trafficking Protocol and the Slavery Convention. A marked difference between the Nigerian anti-trafficking law and the Trafficking Protocol is that the Nigerian law criminalised foreign travel for prostitution and recognised debt bondage as a consent nullifying element. A Nigerian woman who claims voluntary migration into prostitution in Italy is at risk of being prosecuted for trafficking under the law. And the trial or conviction in the destination country for the same offence is no bar to further prosecution upon their return to Nigeria. Thus, a Nigerian woman is not exactly estopped from exercising her free will to migrate for prostitution but as PNG2 (HRM) explained, such woman must also be prepared to bear the responsibility for the consequences including criminal prosecution. Fayemi's African ethico-feminism will very much favour this approach. But a more desirable alternative is that advanced by PNG6 (LEADS-Nigeria) and PNG15 who advanced the position that migration for prostitution is the wrong way to promoting the economic liberation of Nigerian women because the socio political environment in Nigeria will further discriminate against women who went into prostitution.

Even where the position on consent fails the NAPTIP Act treats debt bondage as a consent nullifying element and debt bondage examined in the context of the key values of the NAPTIP Act suggest that women moved under debt bondage are synonymous to slaves. In the light of the deprivation that the Nigerian women moved into prostitution suffer, this chapter adopts PNG13's position that there can be no consenting to human rights violation or slavery.

The chapter also considered the issue of the *juju* oath ritual and its effect on the willingness of Nigerian women to migrate and work in prostitution. Whilst the majority of the participants identify that the *juju* oath ritual is coercive and its administration on the women is to instil fear and prevent the women from speaking out on their experiences, there was the alternative argument advanced by PNG4 (WOTCLEF) and PNG8 (CYPF) that the women being Nigerians, ought to know the implication of accepting to take the *juju* oath. However their position did not deny the coercive nature of the oath after it is taken. The chapter also argues that the administration of the *juju* oath and debt bondage nullifies women's initial consent to migrate and that such women are trafficked and not free agents. The chapter concludes by upholding the Nigerian approach not to recognise migration for prostitution as sex work, hence the criminalisation of foreign travel for prostitution by the NAPTIP Act. But the position of the NAPTIP Act differs from Fayemi's in that the chapter recognises the victimhood of Nigerian women trafficked for prostitution and advances that the criminalisation of such women as free agents amounts to double jeopardy.

Whilst the next chapter also covers issues connected with the recruitment methods used by recruiters to move Nigerian women into Italy for prostitution, the chapter is more focused on the conditions of work and experiences of Nigerian women moved into prostitution as well as the State responses to such experiences.

Chapter Seven

The Recruitment and Implantation of Nigerian Women for Prostitution in Italy

'When the state legalized prostitution, to me it legalized rape.' [A former Danish prostitute] (Beran, 2012:19)

7.1. Introduction

The issue of consent may be less contentious when it relates to the movement of women for prostitution within the boundaries of a State but it becomes complicated when such movement transcends the boundaries of two States with different approaches on prostitution. Presumably, the Nigerian approach to criminalise prostitution and migration for prostitution may be well managed with respect to internal movement of women for prostitution, but the issue of consent with respect to women moved into Italy for prostitution raises complex issues that goes beyond moral questions to conceptual issues such as personal autonomy, gender power, exploitation, human rights' violations and State obligation to protect.

As findings from the last chapter suggest, Nigerian women moved into prostitution are commonly moved into Europe especially Italy, where a significant number of them suffer deprivation of varying degrees. In Europe, States adopt different approaches to prostitution and it is not unlikely that such methods directly or indirectly facilitate the activities of traffickers and the incidences of trafficking. Accordingly, States' responses to prostitution have largely defined States' approaches to the problem of women's trafficking for prostitution.

In addition to the foregoing traffickers, smugglers and potential migrants especially from the African region are easily attracted to use Italy as a gateway to migrate into Europe. And there are different reasons for this: First, the contiguous location of Italy to North Africa through the Mediterranean makes Italy vulnerable to the influx of migrants using the land route thus making Italy a gateway to Europe. According to the United States Department of State (USDOS) 2011 report on human trafficking, Italy serves as one of the gateways for illegal entries into other parts of Europe, especially

by land or sea. Hence, Italy is both a transit and destination country for women, men and children clandestinely moved from different parts of the world. The second factor as it relates to women's trafficking for prostitution is the high demand for commercial sex. According to Hughes (2005), demand for commercial sex is one of the key facilitators of trafficking for prostitution. In the context of the present discourse, Aghatise (2004) notes that there is high demand for commercial sex with migrant women which provide a ready market for traffickers in Italy. Thirdly, Italy is a tourist and religious centre, the human migration flow as a result of such migratory activities boost the growth of both the shadow and open economy. The significance of these activities drives the informal economy in a manner that exposes Italy to illicit criminal activities such as the movement of women for prostitution (Cauduro, *et al* 2009).

The data gathering exercise in Italy, like Nigeria, adopted semi-structured interviews with 18 participants recruited from key international agencies and nongovernmental organisations, government agencies and service providers. In addition to the data from the respondents, data from other sources used in this chapter include data from the case notes of some women who had gone through rehabilitation in shelters, and summary of criminal charges against some of the Nigerian women at the Ponte Gallare Deportation camp in Rome at the time of the fieldwork. In order to locate the consent of Nigerian women moved into and implanted in Italy for prostitution the chapter adopts the research framework to analyse the conditions under which Nigerian women moved into prostitution are made to work. In doing this, the chapter pays particular attention to how the consent of the women is obtained and sustained through the relationship and whether the women are frequently able to opt out of the arrangement with their recruiters. The chapter starts with an overview of Prostitution Legislation and the definition of trafficking under the Italian anti-trafficking law. The chapter then examines demand as a pull factor and the emergence of Nigerian women in the prostitution business in Italy and how that has changed over the years. The heart of the chapter is focused on the recruitment and implantation of Nigerian women in Italy for prostitution and why the women are frequently unable to discontinue the relationship with their recruiters. Finally the chapter examines the role of proper identification in locating the consent of Nigerian women moved into

prostitution.

7.2. Overview of Italian Prostitution and Anti-Trafficking Law

According to the two officers from Charitas Italiana, before 1958, the Italian position on prostitution was simply one regulated by a 1931 enactment passed by King Vittorio Emanuele III. The law at the time like the international agreements on the White Slave Traffic was more concerned about public health and issues of morality associated with prostitution rather than the women in prostitution. These participants notes that the attempt to improve the condition of women involved in prostitution was the focus of a later legislation; the Merlin Law adopted in 1958 and named after Lina Merlin, the politician who started the campaign. Under this new law prostitution in itself was not criminalised but it was unlawful to profit from the prostitution of another. The law also allows outdoor and indoor prostitution without recognising it as a form of work or regulating it. Other prostitution related provisions under Italian law could be found in the Penal Code which deals with prostitution and slavery cases as well as immigration issues. Another law passed in August 1998, in conformity with the United Nations' anti-slavery effort, was designed to tackle prostitution and pornography involving children. Articles 600 - 604 of the Penal Code Law, as amended in March 1998, were part of the immigration law providing social protection to migrants moved into and exploited in prostitution.

In 2003, Italy enacted a substantive anti-trafficking law - Measures against the Trafficking in Persons, Law N.228 (the 2003 law). Unlike the earlier legislation, the 2003 law was designed specifically as anti-trafficking legislation. Consequently, Articles 1-4 of the new law amended articles 600, 601, 602 and 416 of the penal code. Thus, Article 2 of the 2003 law replaced Article 601 of the penal code and defined human trafficking as follows:

... whoever carries out trafficking in persons who are in the conditions referred to in article 600, that is, with a view to perpetrating the crimes referred to in the first paragraph of the said article; or whoever leads any of the aforesaid persons through deceit, or obliges such person by making use of violence, threats, or abuse of power; by taking advantage of a situation of physical or mental inferiority, and poverty; or by promising money or making payments or granting other kinds of benefits to those who

are responsible for the person in question, to enter the national territory, stay, leave it or migrate to said territory, shall be punished with imprisonment from eight to twenty years. The aforesaid penalty becomes harsher, increasing by one third to 50%, if the offences referred to in this present article are perpetrated against minors under eighteen or for sexual exploitation, prostitution or organ-removal purposes.

Article 3 of the same law defined persons involved in the sale and purchase of slaves as, *'whoever, in cases other than the ones referred to in article 601, purchases or sells or transfers any person who is in any of the conditions referred to in article 600, shall be punished with imprisonment from eight to twenty years. The aforesaid penalty becomes harsher, increased by a third to 50%, if the offences referred to in this present article are perpetrated against minors under eighteen or for sexual exploitation, prostitution or organ removal purposes'*.

The definition of trafficking as contained in the 2003 law is more comprehensive than both the Trafficking Protocol and the NAPTIP Act. For instance, the 2003 law adopted the consent-nullifying elements similar to those of the Trafficking Protocol with slight variations. The law provides *inter alia* that *'... whoever leads any of the aforesaid persons, through deceit, or obliges such persons by making use of violence, threats, or the abuse of power; by taking advantage of a situation of physical or mental inferiority, and poverty; or by promising money or making payments or granting other kinds of benefits to those who are responsible for the person in question...'*.

The 2003 law therefore accepts economic coercion (poverty) as a consent-nullifying element, a position that is still being debated by scholars at the international level. The use of phrases such as "of physical or mental inferiority, and poverty; or by promising money or making payments or granting other kinds of benefits to those who are responsible for the person in question" as consent-nullifying elements under the Italian model not only enlarges consent-nullifying elements, it is also more victim centred. Secondly, the aspect of the definition that relates to obtaining benefits, *'by promising money or making payments or granting other kinds of benefits...'* directly incriminates parents and guardians such as was mentioned by some of the participants from Nigeria.

7.3. Demand as Pull Factor

In the course of this research I have had cause to share this research project both within and outside academic fora, and one of the questions often asked is how the researcher intends to address the issue of demand for commercial sex especially that demand for commercial sex is perceived as a key driver of women's trafficking for prostitution. PTL3, a senior consul and the officer with oversight on trafficking and other related issues at the Nigerian Embassy in Rome and PTL5 a Catholic nun in charge of one of the Shelters in Caserta, Italy shared their views on the role of demand for commercial sex in facilitating trafficking for prostitution from the onset of the interviews with them. According to PTL5 (Caserta) states that,

Men who buy sex from migrant women create the market for the traffickers in the first place. Most of the Italian men with all apologies to them are morally bankrupt so the women are moved to satisfy their sexual needs. Italian men and even the madams cannot operate effectively without the connivance or help of the Italian mafia. This is why prostitution is linked with other criminal activities and the mafia in Italy.

Todres (2012:61-62) and Hughes (2000; 2005) also identify that the movement of women for prostitution is driven by demand for commercial sex, but argues that the Trafficking Protocol is weak on issues such as tackling demand for commercial sex. However, article 9(5) of the Trafficking Protocol discourages demand and stresses the role of the States in dealing with it. Hence it requires that *'State Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.'* Also, Principle 7(1) of the Recommended Principles and Guidelines on Human Rights and Human Trafficking urged States to adopt measures targeting a reduction in demand as part of their preventive strategy. It required States to *'Analyse the factors that generate demand for exploitative commercial sexual services and exploitative labour, and take strong legislative action, policy and other measures to address these issues.'*

Dealing with demand, therefore, is not just about men who buy sex from the women, but also questions the way in which destination countries respond to the issues of

women coercively moved into prostitution. Thus, PTL1 (IOM-Italy) argues that the State has a role to play in regulating what can be bought and sold. According to this participant, for the State to effectively deal with demand, it must examine the issues that directly or indirectly foster demand. In that respect, the two officers of Caritas International (PTL10 and PTL11) mentioned that there is a new government regulation on street prostitution, Domestic Security Regulations, 24 July 2008 which empowers municipalities to criminalise activities such as street prostitution as being against public health, thus pushing migrant women like Nigerians to the outskirts of the cities where they are further violated without protection. Although, the regulation also criminalises men who attempt to buy sex from women on the streets, they are of the view that criminalising street prostitution drives prostitution underground and exposes migrant women to more abusive situations where they are virtually left at the mercy of their recruiters. The flaw with the new government measures on street prostitution according to these participants is that it presupposes that all the women involved in street prostitution are regular migrants thus leaving irregular migrant women in more precarious situation. Secondly, such a strategy ignores the fact that women may also still be abused even when prostitution is carried on indoors. And such measures do not necessarily address the issue of demand.

7.4. Emergence of Nigerian Women in the Prostitution Scene in Italy

According to PTL1 (IOM-Italy), the movement of Nigerian women for prostitution cannot be discussed outside the complexities of global migration issues. PTL1 therefore states that:

... with the economic, social and political situation in Nigeria, it is difficult to see how a woman can resist the offer to seek a better life outside her local community where all she has known is poverty, discrimination and even violence. After all, everybody wants a better life, including you. The reason why you are doing a PhD is for a better life. And the desire for a better life is followed by movement and this is also not peculiar to Nigerians alone. It is behaviour common to all humans and affects all the nations of the world.

Some of the participants identify the early Nigerians who settled in Italy as some of the initiators of the recruitment of Nigerian women for prostitution. Three officers of the Italian Ministry of Interior explained that the first set of Nigerians to settle in Italy

were mainly agricultural workers who worked in farms. They also identify that these early Nigerian settlers grew into a very strong and flexible ethnic community, with communal structures in the cities where they lived. The foregoing agrees with what PNG7's of NAPTIP position in the previous chapter, suggesting that the presence of a vibrant Nigerian community in Italy played a key role in the influx of subsequent generation of Nigerian women in prostitution in Italy. Whilst PTL3 of the Nigerian Embassy in Rome affirms PNG2's (HRM-Nigeria) position that it was common for Nigerians to migrate in pursuit of educational and commercial interests, PTL3 states that there was also the movement of unskilled manpower from Nigeria into Italy and these worked in the agricultural farms. At the time, very few Nigerian women went into prostitution following the economic recession but according to PTL5 (Caserta) and PTL3 the situation changed when Italy hosted the World Cup in 1990 and since then Italy has steadily witnessed an increased number of Nigerian women moved into prostitution.

With respect to how the first set of Nigerian women found themselves in prostitution on the streets of Italy, PTL3 of the Nigerian Embassy in Rome, explains that the first generation of Nigerian women found in the prostitution trade in Italy were a product of the economic recession of the 1980s in Italy, and the demand for commercial sex with migrant women which pushed some of the women into voluntary prostitution at the time. Another explanation offered by PTL5 (Caserta) was that:

During the early 1980s some Nigerian women traders who traded in Italian ladies' shoes and bags used to come into Italy to do their purchases to sell in Nigeria. By the mid-1980s, with the introduction of SAP in Nigeria and the devaluation of the naira, some of these women started experiencing financial difficulties so that they were overshooting their overhead costs. These women found that Italian men liked black women. To make some extra money, especially foreign currency, to support their business, they started standing on the road to get the attention of men who wanted commercial sex. Some of them started using this as an alternative way of making extra money to meet their expenses while in Italy on such business trips.

But PTL12 also of the Nigerian Embassy, who states that she migrated to Italy with her family as a child in the late 1970s and has lived in Italy since then, explains that it is difficult to say exactly how the first generation of Nigerian women got involved in

prostitution trade in Italy. Whilst PTL12 (Nigerian Embassy) did not dispute PTL5's (Caserta) account above, she recalled that there had been news about Nigerian prostitutes in the streets of Italy prior to 1990. In her own account, PTL12 states that,

Nigerians had a very strong presence prior to the 1980s. At the time, they were either here as students or to work in different sectors. While some students returned home after studying, some stayed on and even got married to Italians. Some migrants, including women, also came using the Catholic faith as the basis of their coming to Italy. Maybe some women, for different reasons like the recession and expectations, went into prostitution because it offers easy and good money. You never can tell.

These accounts suggest that the first generation of Nigerian women who went into prostitution in Italy went into prostitution voluntarily for varied reasons, one of which is economic or financial gain. However, this position largely contradicts some of the findings from Nigeria especially as put forward by PNG2 (HRM-Nigeria) except that in both accounts, economic pressure as a push factor is acknowledged. But an interesting aspect of the accounts of PTL5 (Caserta) and PTL12 (Nigerian Embassy) suggest that most of the first generation of Nigerian women migrated into Italy using regular means as against the current method of irregular migration. Some of the participants like PTL12, PTL2 (of the Nigerian Embassy, Rome) and the officers from the Ministry of Interior in Rome suggest that the ease with which visas were granted at the time made it possible for some of the earliest women both to migrate and move others using regular means. This latter position indicts the current stringent immigration policies of western countries as facilitating irregular migration.

There are different accounts as to when subsequent generations of Nigerian women started to appear in the prostitution market in Italy. According to PTL2 (Nigerian Embassy), the first generation of women became older and were no longer making as much money as they used to make because the market demand shifted to younger women. In order to sustain themselves financially the older women started recruiting younger women from Nigeria to meet the market demand. PTL2 explains further that *'You have to take note that these woman at some point did not have any other form of income except prostitution, and some of them have grown used to earning big and quick money. They had to bring in younger women from Nigeria to work for them.'*

Another account by PTL12 and PTL2 both of the Nigerian Embassy is that some of the Nigerian women in Italy, for want of extra income, recruited their friends and younger sisters from Nigeria to join the trade. Over time, the first woman is treated as a benefactor and is also called 'madam'. But according to PTL5 (Caserta), women traders turned part-time prostitutes who at normally stand on the road to solicit for male clients and often offer their services in their clients' cars, on bush paths and on farmland. She explains further that it was these women who also started recruiting their own sisters and friends into prostitution in Italy. This was the beginning of the regime of 'madam' and the progenitor of the trafficking of Nigerian women for prostitution in Italy.

PTL5 (Caserta) explains further that it was the first generation of Nigerian women prostitutes that initiated the practice of Nigerian women in street prostitution in Italy. Over time, these women became accustomed to a particular spot (commonly identified as a 'joint') and each claimed such areas as theirs, sometimes renting it to new entrants in the trade. Since some of the women were not permanently resident in Italy, they recruited women from Nigeria to either share their spots or rent the spots to recruits who were bound to make returns to the first woman. The more strategically located a 'joint' is the more expensive. According to PTL5 (Caserta), some of these women later settled in Italy and started the business of recruiting more women from Nigeria into prostitution. In spite of the variations in these accounts, one common denominator between them is that they seem to suggest that Nigerian women who went or are moved into prostitution in Italy are pushed by economic factors.

It is important to state that the irregular status of most Nigerian women moved into prostitution in contemporary times increases the women's vulnerability to the coercive powers of the recruiter. But the need to consider the irregular status of Nigerian women moved into prostitution in Italy is underscored by the extent of powers exercisable by the recruiters and their accomplices who use the threat of deportation to exploit the women. When contrasted with the accounts of PTL5 (Caserta) and PTL12 (Nigerian Embassy) which suggest that the first generation of Nigerian women who went into prostitution did so voluntarily, the precariousness of those recruited into

prostitution become evident. A marked difference between the two categories of women is not in the desire to migrate or to work in prostitution but whether the women have the liberty to discontinue working as prostitutes without fear of intimidation.

7.5. Recruitment and Implantation of Nigerian Women in Italy for Prostitution

Recruiters involved in the movement of Nigerian women for prostitution in Italy used different methods to recruit and move Nigerian women into Italy. In some cases, recruiters take advantage of women's desire for a better life to recruit unsuspecting women. In other cases, family and community pressure makes women vulnerable to recruiters. Referring to women from Edo and the role of family and community pressures on them, PTL2 (Nigerian Embassy) states thus:

The traditional institutions in some ethnic communities are enslaving their subjects by making the women sexual slaves and the men drug traffickers. It is common knowledge that the women from this popular region in Nigeria are sometimes taken before their local chiefs to take the oath and the chiefs will usually place a curse on whoever breaks the oath.

For instance, PTL2 identifies that women, especially of Edo origin, even sought smugglers to assist their migration from Nigeria. PTL2 cites one of the cases that he has come across in his work, Vienna (real name withheld) is from Edo State but was born in Kaduna State and was arrested in the course of police raids.

I came into Italy by land through Lampedusa in 2009, I was sponsored to come and work and I knew the work I was supposed to come here to do because me and my sponsor agreed that we will share the profit half and half because it is a joint venture.

In another case cited by PTL12 and PTL2 of the Nigerian Embassy, Jafia (real name withheld) was born on 12 September 1988, a native of Edo State, and came into Italy by land through Lampedusa in 2008. She, like Vienna, also agreed to come and work in Italy but to 'hawk wares' (soroti). According to PTL12 and PTL2, Jafia was unwilling to return to Nigeria yet she was unwilling to renounce her sponsor.

The foregoing suggests that in the absence of exploitation, it may be difficult to say that some Nigerians are coerced women. Agreeing to migrate to Italy to work and share profits with a sponsor in the absence of exploitation may actually be an

expression of choice. But according to PTL1 (IOM-Italy), the situation of Nigerian women makes it very complicated to postulate that they exercise some form of agency, PTL1 argues that most Nigerian women are not empowered for any major task in Nigerian society. PTL1 and one of the officers from the Ministry of Interior are of the view that the initial plan for some of these women may not have been to work in prostitution but because they are ill prepared for the reality when they arrive Italy, the women tend to accept prostitution as an interim measure. PTL1 describes Nigerian women as hardworking, '*... much harder than men, they are hard workers and they are prepared to engage in any job to support the family.*' Tanya therefore argues that the additional burdens on Nigerian women to care for the family put them in a difficult situation that makes them vulnerable to trafficking.

There are also women who may be coerced directly or indirectly, for instance PTL12, PTL3 and PTL2 all of the Nigerian Embassy Rome state that they had come across Nigerian women who were deceived as to the nature of work in Italy. According to PTL2:

I can tell you that some of the women brought into Italy for prostitution don't have any idea what they are coming here to do. Most of them are illiterate and do not have correct or adequate information on the situation here. It is common to hear them say that they were told they are coming here to plait hair. About 50% of the women I have encountered in my work are ignorant and by the time they arrive here they realise that it is too late. Some of them cannot even write their names or their dates of birth.

PTL6 another Catholic nun at a shelter in the region of Castel Volturno mentions that she started work in the shelter in 2009 and between then and the time of this interview with her, she has worked with eight Nigerian women moved into prostitution. And these women according to her wanted to come to Italy because they thought that Italy holds a brighter future for them. PTL6 states further that the women were deceived with respect to the nature of the job they were going to be doing in Italy. Another Catholic nun in the same shelter, PTL7 who has worked with about 21 Nigerian women is also states that most of Nigerian women moved into Italy were deceived

Affirming that some of the Nigerian women may have been deceived into prostitution,

PTL2 (Nigerian Embassy) cites the following examples:

My friend introduced me to a lady who claimed that her husband had a shop somewhere in Italy and was seeking to recruit sales girls to assist the husband in the running of his business. Upon arrival in Italy I was given some money to do my hair and to buy cosmetics. After which the lady informed me that I needed to start going to the road. When I asked what for, I was told that it was for prostitution and that that was the only way she could recover all the travel expenses.

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The uniqueness of the former case according PTL2 made him to do a follow up on the woman and he is happy to report that the woman is resettled and happy in Nigeria. Whilst the cases illustrates instances of deception the fact that one of the women was bold enough to cry out for help and insisted that she wanted to return to Nigeria cast some doubt on the claim that Nigerian woman are often too fearful due to the *juju* oath ritual to disengage from the relationship. Nevertheless that singular case is not sufficient to suggest that Nigerian women moved into prostitution under the *juju* oath do not live in the fear of breaking the oath. In another narrative by PTL2 (Nigerian Embassy) of a woman, Tinapa (real name withheld), who was eventually deported in August 2011:

'My boyfriend had been in Italy for about two years before I came to join him. In Nigeria before he came to Italy he promised to marry me, so when he came here and he arranged for me to come and join him I was happy. It was my boyfriend who told me who to meet in Nigeria to help me to arrange my travel to Italy. He told me not to pay anything to the man because he had paid him already.

Then in 2008 the man told me that my documents were ready. I came to Italy on a tourist visa by air. My boyfriend was waiting for me and I was happy to see him. He bought me new clothes and treated me well. But one day after some weeks of staying with him, he told me that I needed to look for work to support our expenses. I did not refuse, I was even happy to work but he did not tell me what kind of work I could do.

One day he came home and bought me a fine dress, but a short dress, and asked me to have a bath and make myself fine and put on the dress. I thought that we were going to a party and I didn't want to complain because he had been nice to me. But it was not a party. He took me to the road where other girls were who were dressed in knickers and different short dresses and told me that this is the kind of work that Nigerian girls come to do in Italy. When I told him I was afraid and asked if he was not going to be ashamed of me, he encouraged me and told me that he would support me.

Because he told me that we needed money, I did not want to look ungrateful. Twice, I was arrested on the road by the police because I could not show them my passport and visa, which were with my boyfriend. But I was lucky. They let me go and when I told my boyfriend he refused to help me and kept sending me back to the road until I was arrested again and this time brought to the deportation camp. I have been begging the officers there to please help me to call my boyfriend because I know he will come for me but I have not seen him yet. Now they say they are going to send me back to Nigeria and I don't even have anything for myself because it is my boyfriend who keeps all the money and buys things for us'

According to PTL2, the boyfriend's number was called but the man denied having any girlfriend or that he had ever brought any girl from Nigeria into Italy. Subsequent calls to that number suggested that the number was no longer in use. PTL2 states that it is not unusual to hear about Nigerian women in prostitution in Italy who claim that their boyfriends facilitated their migration into Italy. This participant explains that from the experience on the job, it is not uncommon for suspected traffickers to deny recruiting women into prostitution. According to PTL2 when they sense that they are being

monitored often relocate to another city or country and sometimes change their contact details as part of the attempt to cover their tracks.

As to why Nigerian women are found more prostitution as against other forms of work, PTL5 (Caserta) and PTL1 (IOM-Italy) argue that the women do not have the luxury of choosing the sector to work, because according to the participants the decision is frequently made by the recruiters or their agents (madams or boyfriends), as the case may be, and the women are only expected to submit. PTL1 (IOM-Italy) explains further that the irregularity of the women's immigration status also limits the jobs that the women are able to do. The experience of Biodun (real name withheld), her narrative as adopted from one of the case notes in one of the shelters, best illustrates the position that even when women consent to be recruited into prostitution they are still deceived in some other respect. The cases also exemplifies the women are frequently unable to discontinue the relationship at will without fear of intimidation.

Biodun (Real name withheld)

'I am from Edo State and come from a family where there are 8 children and I am the second child. My mother had the first three children before my father died. My mother then remarried and had five additional children. My mother is a devout Christian and actually tried her best to discipline us, but we were poor.

I was in level 3 of the Junior Secondary School when I had to drop out of school. In 2007 I decided to learn hairdressing because my family did not have money to train all of us in school. It was in the course of learning hairdressing that a friend of mine told me of going abroad to work. She told me of some women who could assist me to go abroad, but I was not interested so did not follow my friend. About two months after the hairdressing started, one of the uncles around us, a family friend, told me that a woman in Italy wanted a sales girl. My uncle then took me to see the woman's brother to discuss with him.

I asked what I would be doing in Italy. The woman's brother told me that there were so many things that I could do, such as nanny work and hairdressing, and also told me that those who want to make quick money do prostitution. But whatever I wanted to do, it would be my choice to decide. He then told me that I would have to pay the sister in Italy €45,000 over a period of time. At the time I did not know what €45,000 was and when I asked him, he said it was not even as much in naira and that it was meant to cover my flight to Lagos and from Lagos to Italy and other things that they needed to do for the travel. He then asked me to pay him an amount of money, like 3,000 naira, to start the process and I told him that I didn't have that kind of money. Then he said I should not worry. He would help me ...

On the day of the journey I met the man at the agreed place in Benin city, I also saw other girls and a woman, later known as the sponsor, who I had not known before. The man told us that we would be travelling with the woman and that he would join us later. But he did not come at all. When we started the journey in a bus they told us that we were going to Sokoto, and from there we would get a flight. I had never been to any part of the north before and the journey to Sokoto was a whole day. I was very tired when we got there.

This extract is from a case note in a Shelter in the region of Castel Volturno

In Sokoto I objected and said that I was told I was going to travel by air through Lagos. The woman told me that things changed. They couldn't tell me everything but we would join the flight in Libya. I didn't even know that Libya was another country and far away. Then the sponsor took us through small villages and big towns for about 2 months until we reached Libya. Before we reached Libya the sponsor forced us to have sex with men in some of the villages and towns or with other travellers, for money. The sponsor collected the money and sometimes gave us something to eat, but if you refused to have sex with men on the way the sponsor would maltreat you.

In Libya we were taken to a house called the connection house where the sponsor handed us over to the man. Again I asked how long we would be here in Libya. The sponsor said that we would be there until the sea was clear and then left. It was then I realised we would be going to Italy by sea and not by air. For the time we were in connection house, the man continued like the sponsor, making us have sex with different men as he introduced them to us. He collected the money and we didn't know how much it was or what he did with it. Everybody was afraid of the connection man but I don't know why.

After three months in the connection house, I met a Ghanaian who liked me so I ran away with him, hoping that he would help me to escape. I was staying with him until one day I told him that I was pregnant and after that I didn't see him again. I was forced to go back to the connection house because I did not know where to go. All the girls I had come with were no longer there but there were new girls. The connection man told me that he had sent all the other girls to the woman in Italy. If I still wanted to go, he would do the same for me.

We travelled through the sea and arrived at Lampedusa. It was in Lampedusa that I met woman who took me to the Caritas where the reverend sisters helped me in their house.'

Biodun's narrative continued

According to PTL5 Biodun later establish communication with her family in Nigeria. PTL5 also alleged that Biodun's family in Nigeria received series of threats presumably from Biodun's recruiters requesting that Biodun needs to either come to them to resume work or they refund the travel expenses. The calls ceased when following the advice from the shelter Biodun's family threatened to report them to NAPTIP.

As to whether the relationship between the women and their recruiters can be likened employer/employee relationship as to make it a labour migration concern, TPL1 (IOM-Italy) postulates that there cannot be any valid contract between the recruiters and the women because they are not of equal bargaining power. She, therefore, argues that:

It is a bit more complex than you think and I will try to demonstrate that. Yes, Nigerian women know, yes they sometimes sign a contract; yes they may believe they are going there to make money. But at the end of the day they don't and this is a violation of their rights. If we don't protect them, no matter how much they knew, no matter their consent, they are frequently exploited and their position of vulnerability exploited so you cannot contract to do this. This is not 2 parties at the same level. The madam is at a higher level while the trafficked woman is below. When she is in the country of destination she has no contractual power and this is a violation of human rights. She is no longer acknowledged as a person but as a thing, and this is what I will say in your final dissertation. Consent is only relevant as far as the exploitation is concerned, not the movement and not the awareness of being involved in prostitution.

And Biodun's case above demonstrates that the relationship between the recruiter and the women may sometimes involve the use of threat to make the women stay on in the relationship. Such threat necessarily violates the personal agency of the women even when there is initial consent to migrate.

7.6. Recruitment through *Juju* Oath Ritual

Participants in Italy were also asked of the role of the *juju* oath ritual in the willingness of Nigerian women to migrate for prostitution. Although Nigerian women moved into prostitution are generally noted to be subjected to less physical restraint than their counterparts from other countries, yet they are regarded as more loyal to their recruiters. PTL5 (Caserta), like PNG4 (WOTCLEF-Nigeria) in Nigeria, states that the original practice of the *juju* oath was not intended to be used as it is currently used. She states that although the women should know the implications, they still go ahead to the shrine to take the oath. According to her, prior to the practice of modern law,

communities, families and individuals, in transacting with one another on a daily basis, would usually seal their agreements with oaths, just to ensure that each side to the agreement kept their promises.

Harm will only come to the person who tries to play smart on the other party. It is this practice that traffickers now use to instill fear in their victims, and because the victims also believe that the juju will work, they are afraid to do anything contrary to what they agreed with the madam. One of the girls brought here once told me: 'I know what my mother can do and whatever she says must surely come to pass.

Available data from the respondents indicates that there is no uniform method of administering the *juju* oath, but the process often involves the use of plants or herbs, which may be mixed with other unknown substances and blood from different animals or birds to make a mixture which the women may be required to drink. Personal items like hair, nails and body fluids may also be taken from the women and retained by the *juju* priest. This, according to most the participants is done to subject the women to fear because it is often believed that fetish rituals are more effective when it involves the body fluid (especially blood) of the people involved. PTL5 (Caserta) offered some descriptions of what is involved:

The women are usually taken to meet a *juju* priest who is often resident in an isolated environment. Some have their shrines in the bush or forest and even those that live among other people use a room that is especially dedicated as a shrine for an idol. The very environment of the shrine is enough to make anybody afraid. Sometimes it involves the use of sacrifices that include the killing of goats and chicken, and the women may be asked to eat some of the meat raw.

According to PTL7 (Castel Volturno) *'These agreements are backed with an oath where some personal items of the girls, such as even panties, nails, menstrual blood, pubic hair and hair from the armpit are taken to seal the agreement.* Bidoun's narrative, which also involves the *juju* oath, describes the process as follows:

Then he told me that I have to swear to an oath that when I reach Italy I will not run away and that I will pay the sister all the money. After that I was taken to a far-off village in the company of six other girls I was meeting for the first time. I was very afraid but it was not a place I could run away from as I don't even know the way we followed there.

At the village we were taken to a herbalist, where we stayed for 3 days. The herbalist

took fingernails, eye lashes and pubic hair from us and said that he would keep them as evidence of our oath and that if we refused to pay up the money they could use it against us. We were also given fresh meat to eat, after which we were made to bathe between 1-3 am each night in green water that had different leaves in it. Thereafter we were told not to tell anybody about the travel. If we shared details of it with anyone we would go mad and if we refused to pay the travel money back, the person we love best in our family would die. We were also told where the meeting point was for the travelling.

According to one of the three officers from the Ministry of Interior, the authorities are aware that Nigerian women moved into Italy for prostitution are frequently subjected to the *juju* oath, the purpose of which is to stop them from speaking out.

We know that most Nigerian women trafficked into Italy are subjected to the *juju* oath, which stops them from speaking out on their experiences. When we try to provide them with some support they will usually escape, only to return to the trafficker again. Our understanding of it is that trafficked women who take the *juju* oath virtually lose the will to act for themselves as they live in fear of doing anything that will break the oath.

And to PTL2 (Nigerian Embassy), even though some of the women are deceived they are unable to leave the madam because '*... due to the fear of the consequences of breaking the oath they have taken, they not only refuse to return home but also refuse to renounce their madams.*' PTL12 (Nigerian Embassy) also considers that the *juju* oath is administered to make the women submit to the will of the madam, thus she states that;

These ladies, especially those from Benin, usually claimed that they were recruited by some women with whom they undertook an oath of secrecy. It is because of this oath that the ladies are too terrified to disclose the identity of the persons who recruited and brought them to Italy. Because they strongly believe in the efficacy of the oath, they believe that if they so much as reveal the details of how they were recruited, they would be endangering their lives and those of their relatives.

It is this same fear that makes them do just about anything, from standing on the road in skimpy clothing to having sex with anyone who comes by, only to turn all the proceeds over to the madam. They are so bound with this fear that even when they are repatriated they allow the trafficker to bring them back again. I have seen at least three women who were deported and were brought back again.

PTL6 (Castel Volturno) also affirms that the *juju* oath used on Nigerian women moved

into prostitution is meant to subject them to fear, *'I am also aware that they take the oath before they come here, and because of the oath most of them do not want to talk about so many things. Even when they come into our shelter some of them are forced to go back to their madams due to the threat and fear of death or insanity.'*

The effect of the *juju* oath is more psychological than physical. PTL5 (Caserta), PTL1 (IOM-Italy) and PTL3 of the Nigerian Embassy point out that recruiters connect physical happenings such as misfortune to the potency of the *juju* oath, just to make the women believe in the efficacy of the oath. PTL3 affirms that the psychological effect of this on the women is huge. He states that sometimes the women display signs of mental health-related problems, which Nigerians commonly tie to the effect of breaking the *juju* oath. PTL3 contends that women are genuinely terrified because they have seen others suffer different misfortunes, including mental illness, just for attempting to discontinue the relationship. Tanya emphasises that the psychological control of the women through the *juju* oath is such that they are made to believe that even speaking with anyone about their experiences will trigger negative consequences. Hence, most of the women reject any form of assistance. Even when arrested by the police, they often refuse to disclose the identity of their recruiter.

7.6.1. Violence against Women Moved into Prostitution

In Italy, Nigerian women moved into prostitution are reported to suffer varying degrees of violence, both from their recruiters and sometimes from third parties including the men that buy sex from them. One of the Catholic nuns (PTL5, Caserta) interviewed in this research states that any attempt by the women to protest against the unfair conditions of work either by way of refusing to go on the road for prostitution or attempt to escape is sometimes punished with physical beating, and this is often done in a brutal way to serve as a deterrent to other women and repress acts that the recruiters perceive as rebellious. The inhumaneness of violence suffered by Nigerian women moved into prostitution in Italy is captured in this narrative by PTL5,

There was this girl, Alice (real name withheld), that we had some time ago. According to Alice, her madam had told her not to wear jeans but to wear very provocative

clothes whenever she went to stand on the road, and unknown to Alice her madam employed some agents to monitor her. But in order to protect herself from the cold weather conditions, the following day Alice hid a pair of jeans in her bag, which she put on as soon as she thought she was out of sight. The agents monitoring her reported this incident to the madam and the madam, without giving Alice the opportunity to explain herself, disciplined Alice her own way.

As Alice returned home that day, she was confronted with the allegation of wearing jeans against the madam's instructions. Attempts to deny it by Alice met with physical violence at the hands of the agents whom the madam had hired for that purpose. The two men beat Alice until the madam was satisfied and thereafter, with the aid of the men, the madam poured dried ground pepper into Alice's vagina. According to Alice, the feeling of that inside her made her unconscious and she was only brought back to reality when cold water was poured on her. Alice was then informed by her madam the next day that the bill for the men hired to beat her up had been added to her outstanding debt. As if this experience was not enough pain to last Alice a life time, her madam sent her back on the road the next day and this was when we met Alice, on one of our out-reach activities.

Participants also identify the use of rape and sexual violence to enforce compliance and for breaking the women making the women lose their self-worth before they are introduced into prostitution. For instance, PTL5 (Caserta) and PTL1 of IOM-Italy cites the insistence of the recruiters that women should wear revealing clothes, especially during winter period, as another form of violence. Other forms of violence according to PTL10 and PTL11 of the Caritas Italiana include when the women are made to stand on the road even when they are sick, pregnant or menstruating, or made to have unprotected sex. And in extreme cases such violence could lead to the death of the women where they are not actually murdered.

PTL3 of the Nigerian Embassy also mentioned that there are reported cases of Nigerian women who are killed that if they escape death by way of getting drowned in the Mediterranean sea. *'I am sure that you must have read it in the news or even on the internet that some Nigerian women prostitutes get killed on the streets of Italy.'*

PTL10 and PTL 11 of Caritas international also affirmed that there have been incidences of deaths of Nigerian women moved into prostitution. According to the participants the circumstances under which the bodies of the women are found is suspect in most cases very few very convictions are recorded in that respect. PTL12 and PTL2 both of the Nigerian Embassy state that recruiters are not moved by the

deaths of any of the women rather, they use such occurrences to threaten other women to submit to the recruiters and their agents to avoid similar fate.

7.6.2. Debt Bondage

According to one of the officers from the Ministry of Interior,

Another common practice with Nigerian women trafficked into prostitution in Italy is that they are subjected to debt bondage. Until they fully pay the debt they cannot regain their freedom. Although some of the women from Edo State are known to have paid their way to be moved to Italy, while the proceeds of their prostitution are moved back home through their pimps and Western Union, the first few years in Italy are spent earning money in prostitution for the trafficker. In the long run, if they are not deported they get more and more involved with other criminal activities such as drug trafficking, and the proceeds from prostitution are also used to finance drug trafficking.

It is not unusual for some recruiters to inform the women being recruited that they will need to pay travel expenses, and sometimes an agency commission, for getting them a job in Italy. But often, as the case of Biodun (above) suggests, the women are made to believe that the expenses to be repaid will not be much and that with hard work they can repay all the money within a short period. Other women, according to PTL3 of the Nigerian Embassy and PTL5 (Caserta), are not informed that the debt will keep increasing and that they will be unable to negotiate it, or that if they miss an installment, they risk the debt being increased or being beaten. Respondents commonly cite figures in the range of €55,000 – €70,000 as the minimum amount that women are commonly made to repay.

As to how other women, especially those from Edo, are able to send money home, PTL5 (Caserta) has this to say:

How can they send money home when all their earnings go to the madam or boyfriend who brought them to Italy? The women cannot spend any of that money because their food and other basic needs are provided for by the madam and added to their debt.

Thus, PTL1 of IOM-Italy posits that a woman cannot be deemed to have consented to conditions such as debt bondage because according to this participant that will amount to slavery. Whilst this thesis does not deny the possibility of women who may be complicit in their own movement abroad, this thesis contends that subsequent exploitation of any form taints the intention of the recruiter and moves such

transaction from smuggling to trafficking.

7.7. Identification and the Protection of Nigerian Women moved into Prostitution in Italy

The increasing transborder flow of people especially through irregular migration coupled with the different conflict situation in Africa and the Middle East underscores need for proper identification of migrants. Proper identification whether at the port of entry or while migrants have integrated into the communal life of the Italian society will serve to segregate migrants based on the circumstance and support effective plan to provide the support that such migrants may need. Identification process is one of the steps that are necessary to fulfill one of the primary purposes of the Trafficking Protocol, protection. This is also one of the key features of the Council of Europe Convention on Action against Trafficking in Human Beings, 2005 (Warsaw Convention) which provides for measures to protect and promotes the rights of victims of trafficking. Article 12 of the Warsaw Convention, for instance, enjoins State parties to take appropriate measures as may be necessary to facilitate the physical, psychological and social recovery of victims of trafficking. Identification is crucial to the foregoing, whereas identification can be a preventive measure both at the point of departure and entry point, the focus of this section will be on the means of identification of Nigerian women in Italy. The section will also look at the measures put in place by the Italian government to protect women identified as trafficked persons.

As to the indicators to look out for in an identification process especially with respect to Nigerian women, PTL12 of the Nigerian Embassy, states that the different agencies and organisations in Italy involve in the issue of immigration especially the involvement of migrant women in prostitution ought to know what to look out for with respect to Nigerian women. According to this participant, where Nigerian women are reluctant to talk about how they came into Italy or where the women simply claimed that they wanted to travel abroad and the effort to actualise that desire brought them into Italy avoiding to state clearly how, when and who supported them. PTL2 explains further that when women claim that they suddenly woke up one day, got tired of the

situation in Nigeria only to find their way to Italy or that a good Samaritan helped them to come to Italy after which they did not see such helper anymore, 'they are rehearsing the trafficker's script'. Another indicator according to PTL2 also of the Nigerian Embassy, is where the women are unnecessarily fearful or show signs of mental illness, this according the participant should serve as a good indicator that there is someone in the 'shadows' whom the woman is afraid of. Another indicator, according to PTL1 (IOM-Italy), is where a migrant woman refuses to report or prosecute serious incidences of violence against her person.

Whilst the foregoing are not exhaustive when used along other indicators developed by international agencies on the subject it will facilitate the identification of Nigerian women moved into prostitution as distinct from other migrants. It will also avoid what most of the respondents think is the improper identification of Nigerian women which often leads to their being treated as illegal immigrants. But perhaps, it is more convenient for the Italian government to treat these women as illegal immigrants in order to avoid State obligation imposed by international law and regional law on victim protection. This is evident in PTL2's claim that oftentimes when street raids are carried out by the Italian police all women with irregular immigration status are moved to the deportation camp where other processes are then carried out. But it goes without saying that the mere act of being detained at the deportation camp may further traumatise a potential victim of trafficking. However the officers from the Ministry of Interior state that all frontline officers in agencies working in the area of trafficking and immigration are regularly trained and are therefore properly equipped to identify potential victim of trafficking.

About eight of the participants in Italy who have worked closely with women moved into prostitution made reference to articles 13 and 18 of the Italian anti-trafficking law but article 18 was most emphasised. According to the participants there are legal provisions that provides for the protection of women who may have been coerced into prostitution. According to PTL5 (Caserta) and the two officers from Caritas Italiana, article 18 provides for two main ways of offering protection to women who may have been trafficked for prostitution. According to these respondents, the commonly used

method is the judicial procedure (judicial path), this according to the participants can be used to successfully apply for resident permit for the women. But the victim is required to take the first step by instituting a legal proceeding against the trafficker (more popularly known as victim denouncing the trafficker) or by lodging a complaint with the police. The participants explain further that upon going to the police, the women will be required to make statements after which they are taken into an officially registered shelter. This may be subject to the police establishing sufficient evidence for prosecution especially the presence of exploitation or violence and the willingness of the victim to cooperate with the police in the prosecution of the traffickers.

The second but least used method, is the 'social path', in this case a victim of trafficking can obtain a permit through the social protection method with the help of officially recognised charities working with victims of trafficking. According to the participants by the Presidential Order No. 394 of 1999, to qualify to do this, such charities are expected to be registered and should have a specific pact with the local authority where they are located. Consequently under Article 18 of the law, such officially recognised charities can make applications on behalf of women trapped in exploitative conditions. For such applications, the women need not report to the police to qualify for any assistance and can get a six months' renewable temporary resident permit provided that they agree to leave prostitution and participate in the social assisted programme. According to the participants, the advantage of this process is that it is not dependent on renouncing the trafficker or participating in the prosecution of the trafficker.

However, PTL1 (IOM-Italy) criticised the practice generally because the law erroneously assumed that the woman must have consented to migrate '... this is why the law requires the woman to renounce the trafficker'. This participant states further that the law is far from the reality that Nigerian women moved into prostitution are faced with because it does not recognise that the women may be under any form of psychological coercion or that even the fear of reprisal attack on the women's families may deter the women from renouncing the trafficker. PTL1 states:

The situation of Nigerian women is so complex that when somebody comes to them with an offer of going to Italy to work as a prostitute they accept it without giving it a second thought. Although the common practice is that they are usually told of jobs such as babysitting, hairdressing etc, let's imagine that they know that they are going to work as prostitutes. What do you think they will do? Of course they will accept it. And I can just imagine them thinking that they will be able to make more money than they could make in Nigeria.

PTL1 questions the issue of consent, not because she thinks that the women did not agree to migrate to Italy, but based on other issues such as poverty, illiteracy and family expectations that push Nigerian women to migrate, the participant argues that there is no valid consent. *'So where is the consent? Where is the issue of consent in this? Is it in the movement? Because I can consent to being moved but that does not mean that I consented to be exploited.'* PTL1 also states that the requirement of renunciation further complicates the conflation between human trafficking and human smuggling. According to PTL1, Nigerian women, as it so often happens, are willing migrants with respect to the movement aspect of human trafficking, but their subsequent exploitation in transit and when they arrive Italy changes them from willing migrants to trafficked victims. PTL1, therefore, argues that the issue of consent to migrate should not be interpreted to mean consent to exploitation.

PTL5 and the two officers from Caritas Italiana in Rome, speaking from the perspective of caregivers, think that the police needs to be more sensitised on the peculiarities of Nigerian women in prostitution in Italy. According to them, the police sometimes are unnecessarily too rigid in following the procedure for granting the temporary resident permit. The participants also argue that some of the recent policies on prostitution in some municipalities in Italy discriminates against Nigerian women moved into prostitution and increases their vulnerability. According to the officers from Caritas Italiana, the recent government policy to stop the late night bus services to help rescue women who may be in trouble and the recent policy on street prostitution drives Nigerian women in prostitution to the outskirts of the cities make them more vulnerable and unprotected.

7.8. Conclusion

This chapter sought to locate the consent of Nigerian women in their implantation in Italy as prostitutes. The chapter identifies demand for commercial sex especially with migrant women as a key factor that drives the trafficking trade in Italy. And because the Italian approach to tackle demand tends to focus more on street prostitution which in most cases affects more of migrant women, participants like PTL1 (IOM) and PTL5 (Caserta) doubt the genuineness of government's intention to tackle demand for prostitution. Whilst the participants recognise that some of the recent anti-prostitution efforts penalises men who buy sexual services from the women on the streets, the chapter agrees with the participants that the current measures are insufficient to curb demand.

Like the findings from the preceding chapter, *juju* oath ritual is also identified by the participants as one of the key recruitment strategies used by traffickers and according to them it is the oath that represents the women to the world as willing agents when in reality they are not. The effect of the *juju* oath ritual on Nigerian women moved into prostitution is described as so strong as to make the women escape from shelter, refuse assistance, only to return to the abusive conditions they were rescued from. Thus the chapter posits that the *juju* oath ritual negates women's free will and valid consent even where that was given at the recruitment stage. The chapter also identifies debt bondage as another strategy used by recruiters to keep Nigerian women in continued abusive situations. Accordingly the chapter argues that the combined effect of the *juju* oath ritual and debt bondage on the Nigerian women moved and implanted in Italy for prostitution render the women devoid of self-will or choice, thus PTL1 likens the situation of Nigerian women in Italy to slavery.

Findings in this chapter suggest that Nigerian women moved into Italy are either coerced or willing agents but both sets of women are subjected to debt bondage, *juju* oath and violence. The chapter therefore argues that Nigerian women may frequently consent to migrate with some, knowing that they are likely to work as prostitutes and others ignorant of the nature of work, but both sets of women are subjected to varied forms of exploitations. Thus this chapter contends that to effectively locate the

consent of Nigerian women moved into prostitution in Italy, the recruitment and movement of the women may not be conclusive evidence of the women's voluntary or coercive movement migration into the prostitution trade.

The chapter argues that whilst the Italian anti-trafficking legislation provides a more comprehensive definition of trafficking, covering wide-ranging consent nullifying activities, such as poverty, the way Nigerian women are treated suggest that the women are often treated as illegal immigrants. And this often leads to improper identification of trafficked women. The chapter posits that in addition to the common indicators to look out for in human trafficking cases, the peculiarities of the modus operandi of traffickers in with respect to the movement of Nigerian women should be considered for purposes of proper identification of likely victims of trafficking. The chapter further argues that other policies like the recent regulation on street prostitution and the practice of making identification of women as victims dependent on the women's renunciation discriminates against the women and makes them vulnerable to continued exploitation.

The chapter concludes by arguing that in the context of the definition of trafficking as provided by the Italian anti-trafficking legislation and in the light of the data from the participants, Nigerian women recruited from poor background or under the *juju* oath ritual or subjected to debt bondage and implanted in Italy for prostitution are more likely to be trafficked than voluntary agents. The chapter argues that the fact that most of these women are treated as illegal immigrants, who are eventually deported, is a failure of the identification process which in turn creates the possibility of re-trafficking. The chapter, therefore, argues that because of the peculiarities of the nature of trafficking from the Nigeria, frontline officers should be effectively trained and sensitised on the indicators to look out for some of which may not be apparent at the initial stage. Even if the effect of the *juju* oath on the women is so effective that the women escape the watchful eye of service providers, proper identification should at least reveal evidence of abuse such as physical violence or exploitation. Thus the next chapter interrogates whether harms and abuses suffered by Nigerian women moved into prostitution in Italy may be consensual.

Chapter Eight

The Effect of Physical and Psychological Harm on Nigerian Women Moved into Prostitution in Italy

The first time I went on the street I was shabbily dressed up by my pimp. I was kind of naked.

I could not stand it I ran and hid myself at the back of the trash bins because I was so ashamed. I was so depressed, very sad but there was nothing I could, do I still go back there every day. And gradually by so doing I lost my dignity as a woman, I lost my pride. The woman in me went out and I became wild. (Narration of a Nigerian Woman adopted from a Documentary of *Na wa Festival*, 2011)

8.1. Introduction

From the findings in the last two chapters, there is evidence to suggest that irrespective of how Nigerian women are recruited into prostitution, they suffer varying degree of exploitation. The findings suggest that the women also suffer different forms of human rights violations such as deprivation of liberty and right to life. The degree and impact of such violence and human rights violation on the women may vary from women to women. Studies conducted by Zimmerman *et al* (2006) and Cwikel *et al* (2004) suggest that women moved into prostitution commonly suffer abuses that may lead to different health complications such as anxiety and malnutrition and in extreme cases to death. Loconto (2002) argues that such harms are detrimental to the well-being of the women.

Whilst the role of consent is the primary focus of this thesis, its relevance is being questioned in the context of the movement and exploitation of Nigerian women for prostitution and having considered consent in relation to the movement element, it appears appropriate to consider the place of consent in exploitation. The Trafficking Protocol requires that other than an attempt to traffic, for trafficking to occur the women must have been coercively moved 'for the purpose of exploitation.' Although the protocol did not define the word exploitation, Article 3 provides a guide as to the types of exploitation that may occur in relation to trafficking thus: '*Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;*' From the analysis in chapters three and four,

consent in relation to the trafficking of women for prostitution is problematic especially that the provisions of the Trafficking Protocol tend to make the requirement of consent as only applicable to the act element. Such representation appears to suggest that, where movement is free of coercion, exploitation in such circumstance may be consensual. This thesis contends that due to ignorance and the desperation of the women to escape the condition prior their recruitment coercion and exploitation may not become apparent until the women are moved out of Nigeria, by which time it is often too late to retract the decision to migrate. The thesis therefore advances the necessity of making the requirement of valid consent applicable to all the elements of the crime and to all the stages of the trafficking process. Thus the relevance or otherwise of consent is being questioned in the context of the totality of the whole transaction from the recruitment in Nigeria to the condition of work in Italy. As earlier in chapter four, exploitation is a subjective term that is capable of different interpretations; Munro (2008:83) rightly notes that scholars disagree on what constitutes exploitation or its normative implication. For the purposes of this research, the concern is not with scholarly accounts of exploitation, rather the focus is in the participants' interpretation of the experiences of Nigerian women moved into prostitution in Italy. This chapter will as much as possible avoid any detailed jurisprudential perspectives of exploitation.

The aim of this chapter is to examine the nature of Nigerian women's experiences against what can be described as exploitation and interrogate whether such experiences can be consensual. The analysis in this chapter is based on data obtained from the research participants, using semi structured interviews on the prevalence and the source of harmful experiences suffered by women moved into prostitution. The chapter which presents an analysis of what the research participants describes as exploitative experiences of the women moved into prostitution draws heavily from the accounts of the participants especially those who are health workers with experience working with migrant women and those who have worked with migrant women as service providers or caregivers. The data generated is then used to argue the key positions in the chapter. In order to appropriately categorise the

experiences of Nigerian women moved into Italy for prostitution, the chapter starts by building on the notion of exploitation as explained in chapter two with the research participants' description of the experiences of Nigerian women moved into Italy for prostitution. And in line with one of the key components of this thesis, conceptualising women's movement for prostitution as a form of labour migration, the chapter then moves on to attempt a classification of such experiences either as failed expectations or exploitations. Whether failed exploitations or exploitations, the chapter notes that both experiences may be unpleasant, the difference lies in the approach of the law in responding to them.

8.2. The Experiences of Nigerian Women Moved into Italy for Prostitution

According to PNG11 (NIS), a senior immigration officer, the movement of Nigerian women into Italy for prostitution poses a considerable security threat to Nigeria and to Italy. But most importantly, its consequences for the women are long-lasting. At the extreme, some of the women may never live to share their experience due to death, either in transit and while they work as prostitutes in Italy. PNG6 (LEADS-Nigeria) explains that death is one of the serious consequences of the transnational movement of women for prostitution;

One of the consequences is that those who are killed in the brothels, you may not even have a record of them. They keep saying this person was last seen here, but those involved in this type of trade, they tend to move. Some of them don't stay in one place. Today they may be in this town or in this country, then you hear stories that they have moved to another. So people may not even know whether you are alive or dead. You might be killed and nobody will know. They will assume you have moved on to somewhere else and they have lost contact with you. There are a lot of things that have gone unrecorded and you may not even know what is happening. It is not something very palatable.

Aside from the extreme cases where death occurs, PTL13, of the International Centre for Migration, Health and Development (ICMHD), states that the movement of women for purposes of prostitution is in all respects debilitating, with tremendous psycho-social and health consequences for the women. Due to PTL13's extensive experience on health issues in transnational migration PTL13's classifications of the experiences of women moved into prostitution is adopted in this section to explain the

different experiences of Nigerian women moved into prostitution in Italy.

8.2.1. Psycho-social Impact

PTL13 uses the word psycho-social to cover emotional and mental related experiences that women who are moved into prostitution often suffer. According to PTL13,

It is not yet clear what the average shelf life of women trafficked into prostitution may be, but available evidence suggests that the years spent in exploitative conditions end in such a way that the victims suffer immense psychological and mental degradation, reducing their life expectancy.

According to PTL13, PTL14 (Oxfam/MSF), PTL1 (IOM-Italy), PTL3 of the Nigerian Embassy in Rome, PNG7 of NAPTIP and PTL5 (Caserta), the movement of Nigerian women for prostitution may lead to psycho-social harm. PTL13 emphasizes that the women moved into prostitution are often 'isolated and denied any form of social network'. According to him, isolation may lead to health complications like vascular diseases such as high blood pressure. He also states that the isolation of women moved into prostitution weakens their morale. Thus, they are not easily motivated to take back their lives and return to the *status quo* because of hopelessness. PTL13 buttressed this position with the following illustration:

If I ask you to lick the floor, you are going to think this is completely absurd and say that you are not going to do that. If I hit you on the head, you will do it. If I ask you to do it every day you can either do one of two things. Either you can go crazy or you can say this is what I am supposed to be doing. You at some point may find that it is easier to justify doing what I ask you to do than challenge my authority, especially if you are not in a position to make that challenge.

Thus, PTL13 and PTL14 (Oxfam/MSF) explain that women moved into prostitution may suffer other health-related complications, such as post-traumatic stress disorder and associated issues like low self-esteem, fear, depression, anxiety, anger, insomnia, paranoia, flash-backs, tendency to mistrust and become unnecessarily suspicious of people around them, addictions and suicidal attempts due to the emotional pressure of their experiences. PTL3 (Nigerian Embassy) and PTL5 (Caserta) argue that the fear of breaking the juju oath makes Nigerian women in Italy

internalise their sufferings. PTL3, PTL5, PNG7 (NAPTIP) and PNG6 (LEADS-Nigeria), state that the despondency of Nigerian women moved into prostitution in Italy is exacerbated by the fear of breaking the *juju* oath.

Thus PTL13 of ICMHD) states that,

It has become increasingly clear that a good number of women moved into prostitution have very limited options open to them in destination countries, because even when they are able to escape or are rescued they soon find out that they are unable to fit into their former lives. And the women frequently return to their exploiters, despite the violence and abusive situations, because they have internalised such abuses so much that they unconsciously legitimise them. Unfortunately, this is interpreted to mean consent.

And because the women moved into prostitution sometimes unconsciously legitimise their suffering, PNG7 (NAPTIP), PTL1 (IOM-Italy) and PTL5 (Caserta) are of the view that it is not unusual for Nigerian women moved into prostitution to regard their recruiters as some benefactors or guardian angels. And sometimes, according to PTL1 and PTL13 the women moved into prostitution are unable to reconcile the image of the benevolent recruiter with the violence, including sexual violence and rape, suffered, even in the course of transit. PTL13 explains that the emotional pressure arising from such suffering is that first the women are in shock over how they allowed themselves to be so deceived, and are unable to reconcile how the person they had believed to be a helper has been transformed into a ruthless individual.

PTL13 explains further that recruiters use rape and sexual violence to 'destroy the women's self-esteem' because 'women with good self-esteem are not likely to make good prostitutes'. In PTL13's and PTL14's (Oxfam/MSF) explanation, loss of self-esteem may lead to passivity and it is this apathy that allows recruiters and some of the male clients who buy sex from the women to do odious sexual acts with them that they would not normally do with other women. PTL13 explains further that rape at the time it occurs, leaves the women feeling guilty and in some cases, a consequence of chronic guilt and the attempts of the women to overcome it or escape reality is their acceptance of prostitution as work.

Another perception of the effect of rape on women moved into prostitution, according to PTL1 (IOM-Italy), is that it is used by recruiters to keep the women in continuous sexual bondage. Tanya explains the rationale for such a position as one that is based on cultural practices that discriminate against women. According to her, some cultures discriminate against women who have been raped. Hence, such women are unlikely to want to return to their home countries. Although it is not clear if this is applicable to Nigerian women, PNG7 of NAPTIP states that women moved into prostitution are most likely to remain unmarried because 'no man would want to eat another man's left-over'.

According to PTL3 and PTL2 both of the Nigerian Embassy, PTL5 Caserta), and PNG7 (NAPTIP), Nigerian women moved into prostitution under the *juju* may 'go mad', that is, show signs of mental illness. Although most respondents who are of Nigerian origin claim that they do not believe in the efficacy of the *juju* oath to harm them, they testify that they have witnessed cases where Nigerian women moved under the *juju* oath are either too terrified to speak about their experiences (PNG7 of NAPTIP) or, in the accounts of PTL3 and PTL5 who claim to have seen Nigerian women allege they see spirit beings who are not visible to other people. As to whether there is any proof that links the *juju* oath to any form of mental illness, especially on Nigerian women moved into prostitution, PTL5, PTL3 and PNG7 postulate that there may not be scientific proof of the effect of *juju* on the mental health of women moved under the force of the *juju* oath, but the following examples are cited as proof;

In Rome there was the story of Dame (real name withheld), a 51-year-old Nigerian woman who went to the Nigerian Embassy in Rome for assistance in securing money owed her by the Italian government. According to the narrative, the woman alleged that the Italian State needed to compensate her for the injustice done to her by Italian men. Further questioning suggested that the woman was probably suffering from the effects of the *juju* oath because she was noted as incoherent and would sometimes ask people around her if they could see the *juju* priest (agba baba) in mirrors.

A similar incident is also reported by one of the officers at the Ponte Gallare deportation camp. According to this officer, Sandy (real name withheld) is a 55-year-old Nigerian woman who claimed to be the cousin of a retired army general, (a one-time second in command in Nigeria during military rule in Nigeria), and also claimed to have links with former Nigerian presidents, including those who are dead. Below is an extract of some of the woman's claims:

I have finished my jail sentence and I am due to attend a meeting with my president, but I don't know why they are still holding me here. They are violating my rights. I also have a meeting with the head of Human Rights Watch worldwide who has come specially to meet with me. I am also meeting with the head of Scotland Yard and *camera de consola*.

PTL2 and PTL12 of the Nigerian Embassy confirmed the above narrative but dismissed the woman's claim as an illusion and alleged that she is likely to be one of those affected by the *juju* oath. These participants supported their position with some of the claims that they alleged the woman made such as having meetings in the camp with high-ranking Nigerian officials, including those who had died before she was brought to the deportation camp. PTL2 and PTL12 also claim that Sandy claimed that such people as she is meeting with, have promised to release her from the camp in their next visit, yet Sandy's record at the camp suggested that no one had visited her.

According to PNG7 (NAPTIP) who claimed to be an expert victimologist, states that the claim of mental illness associated with the *juju* oath as administered on the women may be difficult to prove scientifically but he asserts that:

The oath controls them psychologically by stressing the fact that that they will be haunted. Even in our agency, we have seen cases where we had to go and arrest the juju man to come and weaken the oath administered on the girl. The juju issue is not a fake, it is real. They collect a body-part like hair, or pubic hair or nails and tie it up somewhere. We have some psychiatric cases amongst the returnees. One cannot say whether the charm is working or not, but the psychological problem of not being able to live up to the terms of the oath is real.

Other respondents like PTL2 and PTL12 of the Nigerian Embassy and PTL5 (Caserta) notes that another effect of the *juju* oath is that it prevents the women in exploitative situations from benefiting from the victim-assisted programme, as they

are often unable to renounce the recruiters or co-operate with the State to prosecute the recruiters. According to PTL5, the fear of the *juju* oath makes the women leave the security of the shelter only to return to the abusive situation.

PNG6 (LEADS-Nigeria) states that the overall experiences of the women may be very damaging to them, states that,

... there are also the emotional or psychological impact which you cannot even see because they are not visible. There are people who may be traumatised because they are forced into it. They could be traumatised so much that it affects them for life. It may affect their sexual life. It may affect their relationships with men, or with other people.

Reinforcing the psychological hold that a recruiter may have on women, PTL13 (ICMHD) and PTL14 (Oxfam/MSF) explain that the longer a woman stays in an abusive relationship, the more she begins to see the abuser in a different light, sometimes even becoming unduly loyal because she has learned to cope with the situation. In addition to such undue loyalty, the women according to PTL13 may also become very attached to the recruiters. PTL13 notes that such experiences are not exclusive to women moved into prostitution, but is common to people in long term abusive relationship such as may occur in domestic violence. Explaining further, PTL13 states that such attachment incapacitates the women's natural instincts to resist further acts of violence. Passivity, as may arise in such situation may lead to resistance to change; PTL13 refers to such a reaction as the 'Stockholm syndrome.' The Stockholm syndrome is associated with the Norrmalmstorg robbery incident, involving hostages, in Stockholm, Sweden in the 1970s. It was found that the employees of the bank held hostage by the robbers became sympathetic to their captors and defended them, in spite of their ordeal.

8.2.2. Health Implications

PNG11 a senior immigration officer with NIS, mentions that Nigerian women moved into prostitution are at risk of being infected with sexually transmitted diseases such as HIV/AIDS and other diseases like Hepatitis B. According to PTL13 of ICMHD, HIV/AIDS as experienced by women moved into prostitution, although prevalent amongst such women, is not necessarily tied to the fact that they have sexual

intercourse with male clients. Rather, the evidence shows that violent sexual intercourse, such as rape, is one of the fastest modes of transmitting HIV/AIDS. PTL14 (Oxfam/MSF) states that women moved into prostitution are commonly made to have unprotected sex, which sometimes leads to unwanted pregnancies, forced abortions and sexually transmitted diseases. It is, therefore, axiomatic that women moved into prostitution are not only at risk of contracting sexually transmitted diseases like HIV/AIDS, gonorrhoea, Chlamydia and herpes, but they are also at risk of having abortions or having to raise children whose fathers they may not know.

According to PNG21 (ILO-Nigeria) and PNG16 (NHRC), the processes of the ritual in administering the *juju* oath is one that carries with it serious health hazards because it may sometimes involve the use of unsterilized sharp objects to make incisions on the women's bodies. According to PNG7, of NAPTIP, the women are also susceptible to sexual exploitation by the *juju* priest, which may also expose them to the risk of HIV/AIDS and other sexually transmitted diseases.

Whilst most women moved into prostitution are at risk of these health consequences, Nigerian women are doubly at risk because most are rarely aware of their health conditions, or the precautions they need to take before and during the period of their exploitation, until it is too late. According to PTL5 (Caserta), most Nigerian women moved into prostitution in Italy are novices to the prostitution trade and do not know what the demands of prostitution are, thereby making them vulnerable to contracting sexually transmitted diseases.

But most importantly, as identified by PNG6 (LEADS-Nigeria), PNG21 (ILO-Nigeria) and PTL1 (IOM-Italy), HIV/AIDS constitutes a major hazard in the movement of women for prostitution because they do not have a choice over the client they offer their services to and they are not in any position to negotiate how the sexual services are offered.

Another health-related issue, according to PTL5 (Caserta) and PTL1, is the challenge of accessing health care services, especially for those women who are in Italy through irregular means. PTL5 alleged that recruiters exploit the irregular migration

status of the women in the name of assisting them to buy medication, only to resell it to them at exorbitant rates. To PTL13, the women are at risk of cervical cancer due to their sexual life style, and when a sexually transmitted disease is left untreated, it can lead to infertility and ectopic pregnancies.

8.2.3. Social and Cultural Impacts

Findings from Nigeria suggest that some of the women of Edo origin who are moved into prostitution are moved amidst family pressure for social recognition, as a 'status symbol'. PTL1 (IOM-Italy) and PNG6 (LEADS-Nigeria) identify that the same family pressures that pushed the women out in the first instance make them reluctant to want to return to Nigeria. The women are often under pressure not to disappoint family expectations, particularly those whose parents contributed money to facilitate their migration.

But, unfortunately, PNG4 of WOTCLEF-Nigeria, PTL1 and PNG7 of NAPTIP emphasize that the same cultural practice that pushed Nigerian women out does not accept the women back. Rather, the women are stigmatized and treated like outcasts. According to PNG6,

The fact that they will be deported back to Nigeria constrains some of them from reporting to the Italian authorities. When they are deported they cannot come here to announce that they agreed to go to Italy to work as prostitutes or that they were actually working as prostitutes because even that also comes with a price... There is a kind of stigma about the type of trade they are engaged in because others will say, 'Those Italo girls. This is what that person is doing.' And even if you become born-again that stigma will still be there and society will continue to look at you like some special outcast.

PNG7 notes that the national agency has had cases where families of the women refused to accept them back, or even refused to be reconciled with them. Unfortunately, the agency does not have the capacity to keep them for too long. Thus PNG7 explains that,

... the environment that most of these women come from is such that even when you are rehabilitating them they tell you they don't want to go back to that place. Some time ago, we had a lady who successfully went through our rehabilitation programmes and was supported with equipment worth 150,000 naira to set up a business. She sold all the equipment and used the proceeds to travel again. Is that not a

challenge? Their psyche is that they can only make it abroad.

But NAPTIP's current rehabilitation programme only runs for six weeks. This time is not sufficient to effectively deal with the experiences of the women, and this may be the basis for the women returning to their recruiters, who duly move them back to Italy or to another country. Thus, PNG8 (CYPF) states that,

... put them in their shelter and talk to them. But, you know, I used to tell them that counselling and rehabilitation was not a one month or two months thing. It is only in this country that I have heard people talking of rehab of 2 to 3 months and then they are left on their own. If you want to rehabilitate someone who has been a prostitute, it may sometimes take years. But Nigeria will just do a wishy-washy thing and push them back to the wolves.

The social impact is likely to be more profound if the women are moved into prostitution at a younger age. As PNG6 (LEADS-Niger) and PNG4 (WOTCLEF) explain, younger women may be more affected because most of them are moved into prostitution as unskilled labour and while in prostitution, they are not empowered in any way that will prepare them for a different life outside prostitution. According to PNG6, the future of most of these women is quite bleak because *'for anyone to get a reasonable job in the times that we are in now, you must either have some years of experience or a qualification. Not having it, can affect what kind of job you are able to do and can also affect your future.'*

As noted earlier, PNG7 of NAPTIP states that most of the women moved into prostitution may not get marriage suitors, because according to him, 'no man would want to eat another man's left-over'. Whilst PNG4 to some extent agrees with PNG7, she states that her organisation has recorded some successes in that respect where women who have successfully gone through rehabilitation with them were able to turn their lives around and one of them is happily married. Although PNG4 is unable to confirm if the man who married the woman was aware of her previous life, PNG4 explains that she is happy that the woman was able to take her life back and is doing well.

According to PNG6 (LEADS-Nigeria), such women may also find it difficult to work in

formal sectors or venture into politics because the political terrain in Nigeria generally discriminates against women. Socially, therefore, the movement of women for prostitution reduces their future opportunities, both with respect to family life and career opportunities.

As explained by PTL13 (ICMHD) and PNG8 (CYPF), women moved into prostitution 'are highly mobile'. According to the respondents, the women are moved around different locations very frequently by their recruiters to prevent the women from having social contacts, which might offer them an opportunity to escape or receive assistance as well as making them invisible. According to PTL13, in many cases, recruiters prevent the women from knowing the details of their location. He cites the example of a group of women who were moved to work as prostitutes in Geneva, yet the women never knew that they were in Geneva, *'the women did not have any idea where they could be and did not even know the name of the city or the street where they were, until they were rescued.'* According to PTL13, *'from a social control perspective this is very important because if a person do not know where they are, then they are unlikely to attempt any escape.'*

Another social impact of the trans-national movement of Nigerian women for prostitution is that they are often made to change their names and other personal details. PNG4 (WOTCLEF) mentioned earlier that the current trend in the recruitment of Nigerian women for prostitution is that women from other regions of Nigeria are recruited from Edo State, and sometimes some of the women are made to take up Edo names under the pretence that they are natives of Edo. Nigerian Embassy officials in Rome state that such changes in personal details of the women makes identification complicated. PTL1 (IOM-Nigeria) of the Nigerian Immigration Service, explains that such a situation is even more complex now, with the recent update of the issuance of an e-passport, it has become difficult for a person to have the same biometric data under different names. Tanya criticises the identification process that tends to emphasis the nationality of the migrants above the needs of the migrants.

Socially, most of the women moved from Nigeria to Italy as stated in chapter three

are from poor economic backgrounds with little education or skill that can enable them work in different sectors. Hence, even when they get their freedom, they have become older and with the loss of self-esteem, most of the women (like the narratives of Dame and Sandy), are often unable to work in any other sector other than prostitution. According to PNG6 (LEADS-Nigeria) and PNG15 (FIDA), even if the women had thought to go into prostitution as a temporary measure, because they are often unaware of the complexity of the arrangement, they end up staying in it longer because they are unable to do anything else due to the burden of paying the debt. When that is combined with the social and cultural discrimination that the Nigerian society attaches to women in prostitution, migration for prostitution may end up doing more harm than good in the long term and may not therefore serve as an avenue to bridge gender inequality.

8.2.4. Economic Impacts

PTL13 (ICMHD) states that the movement of women for prostitution is first and foremost driven by the economic gains that only accrue to the recruiter. Although the women are also driven by economic factor of improving their lives, PNG21 (ILO-Nigeria) is of the view that in most cases, such desires for a better life may never be realised because the recruiters are more driven by the economic gains that will accrue to them to the detriment of the women; 'after all, madams are purely into trafficking as a business venture.' To these madams, the women moved into prostitution are like money-making machines. In the words of PTL3 (Nigerian Embassy), 'a trafficked victim is a pawn in the hands of the traffickers'.

The UNODC/UN.GIFT report of 2008 states that the economic impact of the trans-national movement of women for prostitution may be difficult to quantify. But the report identifies the key economic impact as including different issues, including the resources that are devoted to combating the problem in all its ramifications. It may also manifest itself in the form of loss of manpower and revenues to the States, as well as loss of earnings to the women themselves. Thus, while Nigeria's potential manpower is regularly depleted and there is also the potential in the future of having a group of unemployed old women who may end up economically dependent on

others, because Nigerian women moved into prostitution are unable to negotiate their wages or how they are paid, they also lose most of their earnings. The Italian government is denied some revenue because the irregular immigration status of the women means that they can only work in the shadow economy. However, the report states that countries of origin may benefit from remittances from migrants abroad, and some of those remittances may be realised from the exploitation of women in prostitution. This is a possible explanation for the luxurious buildings allegedly built by 'Italo girls', especially in Benin City in Edo State. But according to most of the respondents, these remittances come more from recruiters than those who are working as prostitutes.

Chuang (2006:140) argues that the movement of women for prostitution is 'an opportunistic response' to the tensions between the economic necessity to migrate, on the one hand, and the politically motivated restrictions on migration, on the other. Recruiters often seek to maximise profit at all stages of the process and the subjection of the women to debt bondage are all intended to benefit the recruiters. PTL2 (Nigerian Embassy) explains that the motives of recruiters and their agents are two-fold: financial gain that offers them easy money to live a flamboyant lifestyle and the pleasure of violating the person of the women through violent sex. But the women moved into prostitution only suffer economic set-back through debt bondage.

8.2.5. Physical Impacts

Participants were generally of the view that even when women agree to migrate for prostitution, they do not expect to be raped (PNG6 of LEADS-Nigeria and PNG21 of ILO-Nigeria) or that they will be abandoned in the desert (PNG7 of NAPTIP) or even that they will be beaten and their bodies marked with a hot pressing iron (PTL5, Caserta). PTL13 (ICMHD), PTL3 (Nigerian Embassy) and PNG8 (CYPF) state that it is not unusual for women moved into prostitution to be physically assaulted and beaten in a way that sometimes results in bodily injury such as broken bones. PTL5 states that in her 11 years of working with women moved into prostitution, she has come across women who have suffered varied forms of physical violence such as being beaten. She explains that recruiters, especially the madams, often employ

agents to do the beating and commit other horrifying abuses. In PTL1's (IOM-Nigeria) view, the inability of the women to resist wearing clothes that do not protect them from the cold, especially during the winter, is also a form of physical abuse.

According to PTL13 (ICMHD), aside from the fact that some recruiters enjoy abusing the women, the use of physical violence such as sexual violence is a psychological tool used to destabilise the women moved into prostitution at the early stage of the trafficking process. PTL13 states further that the sooner this strategy is used, the easier the recruiter finds it to exercise coercive powers over the women. Tanya identifies that the sufferings are made worse by the fact that the women are moved into a foreign land whose language and culture they may not understand.

PNG6 (LEADS-Nigeria), PNG2 (HRM), PNG13 (NHRC) and PTL1 (IOM-Italy) are of the view that such sufferings amount to human rights' violations. Thus according to PNG13 (NHRC)

The things that we need to look out for in cases like this are whether there are human rights violations, such as the deprivation of liberty, torture and rape. You may consent to be moved to Italy for prostitution but you cannot consent to a violation of human rights... Consent cannot be used to justify a human rights violation.

Rightly so there are human rights that are non-derogable and cannot be taken away, no matter what the situation is. Some of the experiences of Nigerian women as analysed above fall into the category of such rights and consent cannot be pleaded to diminish their non-derogability.

8.3. Failed Expectations or Exploitation of Nigerian Women Moved for Prostitution

Whether the movement of Nigerian women is conceived as trafficking or a form of labour migration, the previous chapters have shown that non-definition of the word exploitation, especially in relation to prostitution also fuelled the feminists' debate. Although the Trafficking Protocol used the phrase 'at the minimum', it is not clear what should be the minimum threshold at which exploitation in prostitution becomes objectionable. Thus, the challenge is how severe does exploitation need to be to classed as criminal and thus, trafficking or what experiences can be safely classed as

failed expectation?

The participants commonly identify poverty as the key factor that pushes women to migrate in search of a better life and thus financial benefit. PTL1 (IOM-Nigeria) actually identifies that all human migration is driven by desire for economic or financial benefits. According to PTL1 (IOM-Nigeria) and PNG13 (NHRC), underlying the desire to migrate is the expectation that in Italy, whatever job they are signed up for will earn them a better living condition than being in Nigeria. Thus PNG13 states,

For instance, if someone wants to travel to Italy, they tell them they want to give them jobs and a better standard of living. Because the conditions we have here are quite harsh for people to survive, it is always attractive to say 'maybe if you go over there, things will be better in terms of work and so on.

PNG21 (ILO-Nigeria) and PNG8 (CYPF) are of the view that the primary expectation in the hearts of the women at the time they agreed to migrate was to earn some money to take care of themselves, and to send back to their families in Nigeria. While PNG8 identifies that, *'Money is a common expectation of these women, as it is for everybody else. What will people not do for money?'* PNG21 states that the women expect that, *'you will be able to send Euros to your parents and you will be able to achieve things beyond your imagination.'* For PTL1 (IOM-Italy), *'Nigerian women expect that they will be able to make some return on their family's investment in raising money to send them abroad to work.'* And according to PNG7 of NAPTIP, because most Nigerians think that Europe and America is the land of opportunities (*Eldorado*), the expectation to make 'good' and 'quick' money is quite high.

As to whether these expectations are met, most participants are of the view that they often remain unfulfilled. PNG21 (ILO-Nigeria) explains that in the long run, some of the women who survive being killed, deported or deformed may end up making some money, but that will be after they have paid up the debt imposed on them.

The expectations of these women are never met when they arrive there and even among those who have been bold enough to talk about their experience, the impression is usually that you are going out there to make it big. Within 6 months or thereabouts, you will be able to buy a car, you will be able to send Euros to your parents and you will be able to achieve things beyond your imagination.

When they get there, the reality sinks in and they find that in 3, 4 or 5 years' time they are still serving their trafficker. They have not been able to make anything for themselves. Aside from paying as much as 50,000 Euros, they are also made to pay for light, which is provided by the madam. They also pay for the house, which is provided by the madam, so it is like they are working for the madam.

So all they do revolves around the madam and at the end of the day they find that they have made little or nothing to keep body and soul together.

PNG21 explains further that even when it does not follow the sequence above, either because some of the women were deported or they voluntarily return home, they often return to find that most of the remittances have been spent by their families, then they are left with *'.... nothing substantial to fall back on. You find that there is nothing in the bank for you. The money has been squandered along the way. As it was arriving, your people were spending it. Either way, their expectations are not met.'*

PNG8 (CYPF) also takes the view that the expectations of the women may not be realised because *'When some of these women get the money and send it home to family members they think they can trust their parents. Only to return to Nigeria to find out that daddy used all the money to show off and marry more wives. You cannot say that their expectations were met.'* PNG7 (NAPTIP), on the other hand, suggests that some of them may never even get to make any money because they are either intercepted before arriving in Italy, abandoned by the recruiter in transit countries or in extreme cases left to die. The respondent explains further that those who are lucky to survive such situations may not even be able to earn sufficient money to keep them going in the destination country. In the end, *'their expectations are still disappointed, but because of the shame they may be unwilling to return to Nigeria'*.

PTL1 (IOM-Nigeria) identifies that whether Nigerian women moved into prostitution consented to be moved or not, their expectations are often disappointed,

Those who consented to come to Italy to work as prostitutes must have thought that it would be better for them to be prostitutes in Italy than in Nigeria. But they are disappointed when they are not even allowed to determine how to spend what they have earned. You can be sure that they will also be disappointed in not being able to move around freely and by hearing that the debt they were told was small is actually

so much that it will take them longer than 6 months to pay.

The disappointment of the women who are deceived is even worse and sometimes can result in emotional shock. First, some of them may be told that they will be coming to Italy by air, but they end up travelling through the desert to come here. Then there is the weather, the food and the culture and at the end of it all they cannot keep the money. The expectations of this group of women are higher and most go unmet.

PTL1 also states that family expectations are high, especially for those women that were pushed by family pressure to migrate to Italy. Although, PTL1 notes that family expectation is not important, she suggests that Nigerian women are often reluctant to return to Nigeria, and would rather endure the abuses of the recruiter, because of such expectations. According to PTL1, the conditions under which the women are made to work in Italy are deplorable;

Whether those of you in the academic world want to call it expectation or exploitation, it is not right and no civilised society with values should accept it. There is a distortion of the concept of trafficking and again the rights of individuals to move. We are following the path of a world built on the principle of individualism, because the liberal system is based on the paradigm that the individual must be free to do whatever he or she wants. At the same time, we don't have provisions for the individual in international law because, as we know, international law is the law of States.

If the experiences of Nigerian women moved into prostitution in Italy are limited to their inability to make money or as much money as they had expected, then it will simply be a case of failed expectations and consent in that respect may be used to legitimise the process. Thus, Valdman's (2009:2) idea of 'exploitation on the beneficial use' will probably refer to the case of failed expectations of Nigerian women moved into prostitution. It will, therefore, not be wrong to posit that consensual exploitation is possible in the context of an economic transaction where migrants accept lower wages because of lack of alternatives (Wilkinson, 2003:78-79). Wertheimer (2003:139-40) identifies that weak reciprocity does not require that mutually beneficial exchanges be equal.

With respect to consensual exploitation, Touzenis (2010) has argued that women moved into prostitution may have sought the opportunity to migrate, but that should

not be taken as consent to exploitation. According to Wilkinson (2003:78), the very idea of exploitation still involves some minimal consent and some coercion that the women are unable to resist. But according to Cameroon ((2008:85),

The idea that a person may be responsible for some of the decision that resulted in their finally being trafficked seems unattractive to media and governments alike. The simplistic view is that to be victimised one must be blameless in all regards.

Thus, Cameroon argues that for women to be classed as trafficked, they must not be complicit in the whole transaction or display some form of agency as to warrant being treated as 'co-conspirators'. Cameroon's explanation tends to imply that women who in any way participated in their migration abroad even if exploited, are smuggled migrants rather than trafficked victims. The flaw with Cameroon's position is that it is not in line with the definition of trafficking, which assumes the giving of consent is invalidated by a subsequent act of coercion or fraud. The author's position ignores the reality that the capacity to consent is coextensive with the level of information that the person giving the consent possesses.

It is difficult to conceptualise that consent to migrate is consent to exploitation, even when such exploitation results in serious harm such as death, rape or even physical violence amongst others, occurring. To conceptualise such harms as failed expectations will amount to trivialising the seriousness of the harms actually suffered by women moved into prostitution and downplaying the criminality associated with such harms. Some of the respondents, notably PTL13 (ICMHD), PNG8 (CYPF), PNG13O (NHRC), PNG5 (LEADS-Nigeria), PNG21 (IOL-Nigeria), PNG7 (NAPTIP), PNG4 (WOTCLEF) and PNG2 (HRM), are of the view that such harms cannot be classed as consensual as they amount to a human rights' violation.

The judgment of ECtHR in the case of *Rantsev v. Cyprus and Russia* [2010] also suggests a human rights' approach to the problem and serves to highlight rights that are likely to be violated in the trans-national movement of people for prostitution. In that case Rantsev, a Russian national, brought an application before the European Court of Human Rights against the Republic of Cyprus and the Russian Federation, for the alleged violation of some of the provisions of the European Convention on

Human Rights and Fundamental Freedoms, especially Article 2 (right to life), Article 3 (freedom from torture, inhuman and degrading treatment), Article 4 (freedom from slavery, servitude, forced and compulsory labour) and Article 5 (the right to liberty and security of the person). Further, Rantsev alleged that the Cypriot police failed to protect his daughter Ms. *Rantseva* from trafficking and failed to prosecute those responsible for his daughter's death. The Court found that Cyprus violated Article 4 because it failed to put in place proper legal and administrative measures to combat trafficking and protect Ms *Rantseva*, in spite of circumstances that suggested reasonable suspicion of trafficking. The Court also found that Russia violated Article 4 by failing to investigate how and where *Ms Rantseva* had been recruited and who were those involved in the recruitment.

The key weakness to conceptualising the movement for prostitution as a form of labour migration is that it fails to address the issue of exploitation. So that, as the different accounts of the respondents suggest even when Nigerian women consent to migrate for prostitution, they are often ignorant of the conditions under which they will be made to work as prostitutes in Italy. Aside from such defective consent, it is difficult to conceive that women moved into prostitution can consent to a human rights' violations such as the Court identified in *Rantsev's* case.

That the movement of women for prostitution is a human rights' violation is not strange to international human rights law or international human trafficking laws. Obokata (2006) and Askola (2007) have raised the concern that the movement of women for prostitution is a violation of human rights. Thus, Obokata (2006) argues that women moved into prostitution are '*victims of human rights abuses rather than criminals who violate national immigration laws*'. Askola (2007) also avers that the essence of flagging trafficking as a human rights' violation is to make the affected persons the focus of any intervention.

Recognising the harmful experiences of women moved into prostitution as a human rights' violation is one thing, addressing it as such is another issue. Thus, Tanya states that,

Trafficking has been criminalised, but there is one thing unless you have it explicitly spelt out in your law it will not work. That is the protection of the victim. Victim protection must be provided for by the law and this is what the protocol should address. But unfortunately, this is where the protocol has failed.

There is no international definition of what it means to protect victims. There is also no obligation to protect victims, but States are obliged to criminalise trafficking. How can you combat trafficking without protecting victims? This is hypocrisy and after eleven years of the Protocol reality is beginning to set in. The Protocol is being found to be a far cry from what it ought to be.

I get more and more apprehensive about the UN system and there is a need to deconstruct the whole human rights system, because the real challenge is the protection of the human rights of people, especially when they are outside their country of origin. This is an area not covered by international human rights or by the Protocol.

8.4. Conclusion

It has been noted in the earlier chapters that the requirement of consent created two groups of women moved into prostitution, the consenting and the coerced. In the context of Nigerian women who may have been moved for prostitution and made to work in circumstances that amounts to a violation of their fundamental rights, consent becomes even more problematic. To determine whether the experiences of Nigerian women moved into prostitution in Italy violates their fundamental rights, the chapter attempts to define some experiences as failed expectations as distinct from exploitation. This chapter demonstrates that when women are moved into prostitution, their experiences can be classed into two: failed expectations and exploitations. The difference between the two lies in their consequences and impact on the women and law's response to them. The chapter, using the data from the respondents demonstrates that the experiences of Nigerian women may vary but these experiences are more likely to be a combination of failed expectation and exploitation.

Failed expectations, because the women are pushed by poverty and lack of employment opportunities to migrate and one of their expectations is that they will be able to make some money to take care of themselves and their families. Exploitation, as it occurs in the movement of women for prostitution may be consensual and non-consensual depending from what angle the experiences, sought to be classed as

exploitation are viewed. The necessity of determining whether or not exploitation may or may not be consensual is that the consequences and how to address them differ. Whilst failed expectations and exploitation may be unpleasant for the women involved, the case of *Rantsev* and some of the participants suggest that most of the experiences of Nigerian women moved into prostitution in Italy amount to a human rights' violation.

The definition of exploitation as used in the context of the Trafficking Protocol is one that seeks to prohibit the criminality associated with the movement of women for prostitution. It is therefore contradictory that consent to migrate does not affect the criminal responsibility of the people who facilitate such movement, even when harm is caused. This chapter concludes that the experiences of Nigerian women moved into prostitution in Italy involves a violation of their fundamental rights for which an individual's consent cannot be used to diminish the criminality of the act, thus Nigerian women moved into Italy and worked under the circumstances identified by the participants should be treated as trafficked victims.

Final Conclusion

Consent plays a crucial role in the justification or criminalisation of an act. Whilst a woman may validly consent to a facilitated migration, the use of coercion or deception or other coercive measures may render such consensual migration a criminal act, trafficking. The adoption of consent as a key determinant of trafficking implicates that where no coercive means have been used to recruit a woman for prostitution, her movement is deemed consensual. But whether there can be a consensual exploitation is another issue. This thesis set out to locate the consent of Nigerian women moved into prostitution by exploring how practitioners in the field of human trafficking make sense of consent in the movement of Nigerian women for prostitution in Italy. To do this, the thesis attempts to resolve the place of consent under international human trafficking law through a baseline mapping exercise. The thesis also sought to problematise consent in the transnational movement of women for prostitution by conceptualising such movement as a form of labour migration. Most importantly the thesis contextualised consent in relation to the movement of Nigerian women for prostitution and seek to determine the role of the *juju* oath ritual and debt bondage on the consent of the women moved under such conditions.

To achieve the foregoing I adopt a qualitative research method, and using a combination of purposive and snowball samplings to recruit 40 participants including experts, academics and caregivers amongst other people in Nigeria and Italy. The research notes the extensive feminist engagement with the twin, but strongly related issues of prostitution and trafficking for prostitution. Whilst the research sustained the feminist debate on prostitution and trafficking for prostitution vis-à-vis the place of consent, the research adopts Crenshaw's (1991) structural intersectional framework to analyse the empirical and philosophical conception of consent in the context of the circumstances from which Nigerian women are recruited and implanted in Italy for prostitution.

The thesis notes that consent or coercion is one of the crucial elements that differentiate human trafficking from human smuggling. Coercion is required both to identify the women as victims of trafficking and to establish the guilt of the recruiter.

The thesis argues that to establish consent or coercion is problematic and the consideration of either concept in relation to the movement of Nigerian women for prostitution further complicates the subject of inquiry. The complexity of consent especially in the light of the feminists' debate on prostitution and trafficking for prostitution necessarily assumes that the women moved into prostitution are one homogenous group. As the thesis demonstrates, consent in the context of Nigerian women moved into Italy for prostitution tends to create a category of women who are neither trafficked nor smuggled but yet exploited. To determine whether aim and the objectives of the research have been achieved this concluding part of the thesis starts with a summary of the conclusions drawn from the substantive chapters as essentially representing each of the objectives and concludes with the final outcomes of the research.

Conceptual Issues Associated with the Trafficking of women for Prostitution

In this chapter, I set forth the phenomenon of trafficking of women for prostitution as a complex problem that cuts across different disciplines making it possible to confuse it analogous to other phenomena. This chapter therefore compared and contrasted the trafficking of women for prostitution and other illicit criminal activities such as human smuggling, transnational organised crime and slavery. Women's trafficking for prostitution was also examined through the human rights lens and from a labour migration perspective to determine whether when trafficking occurs, it can be classed as a human rights' violation or a labour migration issue. But of great interest to this thesis are the overlaps between the trafficking of women for prostitution and human smuggling. The chapter notes that the Trafficking Protocol and the Smuggling Protocol create a picture of a trafficked person as one who is coerced and a smuggled person as a willing agent. As stated below the use of consent as a standard of distinction between the two phenomena is not only misleading, it creates a complex problem of how to identify which category of migrants Nigerian woman moved into prostitution may belong. This complexity is further aggravated by the feminists' debate on prostitution as sex work or as a form of violence against women. The implication of these different situations is that the outcomes create different persons, victims or criminals and determine the State obligations attached to such

outcomes. The chapter considers the various factors that facilitate the movement of women for prostitution and notes that both trafficking for prostitution and human smuggling may be affected by complex socio-economic factors that make locating consent or coercion problematic.

Baseline Mapping of Consent under International Human Trafficking Law

This chapter offers the legal and contextual foundation of consent under international human trafficking law and provides a platform upon which the issue of consent in subsequent chapters of the thesis is built. The chapter notes that consent is not a new concept in international human trafficking law except that the implication of it in a trafficking transaction may differ under different regimes. In analysing the earliest international anti-trafficking regime the chapter identifies that whilst the framing of consent in the different international instruments prior the adoption of the Trafficking Protocol differ the implication under those treaties was that consent was irrelevant.

With respect to prostitution the chapter found that whilst the earliest legal framework on trafficking conceptualised trafficking for prostitution as an act that was mainly grounded in the exploitation of women in prostitution and made consent to such an act irrelevant, the contemporary framework, the Trafficking Protocol introduced different permutations to the subject. The chapter found that in the earlier treaties, the place of consent in trafficking of women for prostitution was never a contested issue (Balos, 2004:148; Jeffreys, 2009) until the 1980s. This era brought a change to the feminist stance on consent and prostitution, leading to a sharp division within the feminist group. Women's activism at the time influenced subsequent treaties on women's issues but most importantly redefined trafficking especially as it affects women and prostitution. Though the current definition of trafficking commonly commended for achieving a unanimous definition of trafficking (Gallagher & Holmes, 2008; Todres, 2011) is not without its limitations.

The chapter identifies the ambiguous role of consent in the trafficking process as the key limitation of the Trafficking Protocol. This limitation is complicated by the failure of the Trafficking Protocol to properly delineate the boundaries of trafficking for prostitution and the different consent nullifying elements. From the perspective of

intersectional feminist framework the role of consent cannot be examined outside the prevailing condition from which the women are recruited and implanted in destination countries for prostitution. Thus the chapter highlights the role of economic coercion in the movement of women moved into prostitution and affirms Abramson's (2003) position that consent in that context ignores how gender, economic and education statuses can affect the choices that people make. The chapter contends that the Trafficking Protocol is not alive to context specific issues such as may affect Nigerian women moved into prostitution in Italy.

With respect to the issue of exploitation, the definition of trafficking seems to imply that consent or lack of consent is only required with respect to the movement thereby implying that exploitation could be consensual. One of the critical questions that this chapter had to answer is whether consent must run through all the threads of trafficking. The chapter advances the argument that the requirement of consent should be conceived as applicable to both the act element and the end purpose.

As to whether lack of consent should be contemporaneously present in the act and exploitation to give rise to the crime of trafficking, the chapter acknowledges that the life circle of trafficking is complete with the three elements together but argues that with respect to the application of consent, all the three elements of trafficking can stand alone. Thus the chapter argues that in order to criminalise attempted trafficking, a more effective approach will be to presume lack of consent in favour of the women who may be trafficked if such attempt had been successful.

The challenge that arises with locating the role of consent in the movement of women for prostitution is that lack of consent can only be established by the means elements which are not exhaustive and are subject to individual or group interest interpretations. This has fuelled the feminist debate as to whether the requirement of consent denies women's agency to migrate for sex work or as a measure to safeguard to women against violence.

Problematizing Consent in the Movement of Women for Prostitution

Until this chapter, the thesis had attempted to locate the role of consent in the

trafficking process in the context of the spirit and letter of the Trafficking Protocol, criminalisation. This chapter sustains the liberal feminists' argument in favour of prostitution as sex work to problematise consent and conceptualise the transnational movement of women for prostitution as a form of labour migration. The chapter accentuates how the notions of consent, agency, choice and autonomy are capable of subjective interpretations. The chapter then adopts the ILO's Declaration on Fundamental Principles and Rights at Work, adopted in 1998 as encapsulated in the four principles of collective bargaining, elimination of forced labour, elimination of child labour and discrimination in employment to conceptualise the transnational movement of women for prostitution as a form of labour migration.

The key outcomes of the chapter include but not limited to the fact that women into prostitution do not enjoy freedom of association or collective bargaining. With respect to the elimination of discrimination in employment, the situation of the Nigerian women in Italy suggests that the women are likely to experience discriminations based on their nationality that may also impair their proper identification. This is particularly so in the light of restrictive migration policies which push people to seek irregular methods of migration.

Contextualising Consent in the Movement of Nigerian Women for Prostitution in Italy

To locate the consent of Nigerian women moved and implanted in Italy for prostitution, chapters six and seven attempt to investigate the methods used by recruiters to recruit Nigerian women and move them into Italy, as well as the conditions under which the women are made to work in Italy. Although, chapter one examined some of the factors that facilitate the movement of women for prostitution from a general perspective, chapters six and seven examined the push and pull factors in the context of Nigerian women moved into Italy for prostitution. Poverty and demand for commercial sex were identified as the key push and pull factors respectively. Interesting positions came up from the interviews with some of the participants as to the perceived role of poverty and demand for commercial sex in facilitating the movement of Nigerian women for prostitution. The overwhelming

position was that the prevailing economic situation as manifested in poverty and gender inequality makes Nigerian women vulnerable trafficking in their attempts to seek better life outside the shores of Nigeria. But the attraction for Italy as a destination country mainly lies in the demand for commercial sex.

Overwhelming evidence from the participants suggest that many of the Nigerian women moved into prostitution in Italy are from poor backgrounds, where there is no access to education and the environment is not free from gender discrimination; it is, therefore, difficult to balance this with agency and autonomy of the women to make informed choice as to validly consent.

The chapters identify that some Nigerian women in search of better life may agree to be moved into prostitution in Italy but it is not clear how much such women know about the nature of prostitution or their roles and responsibilities working as a prostitute in Italy. In examining the recruitment pattern used to move women from Nigeria, findings suggest two categories of women: those who consented to be moved into prostitution but are unaware of the details and implications of the job. It was found that such women may not even know what it means to work as a prostitute, they may not know that they do not have a choice as to do as they please such as the number of men to service, number of days or duration of time to work or even that they will not have control over their earnings. Findings suggest that most Nigerian women moved into Italy for prostitution in contemporary times may fall into this category.

The other category of Nigerian women moved into prostitution in Italy is those who are frequently deceived with bogus job offers that do not suggest prostitution as an option. Respondents especially in Nigeria were divided as to whether such a category of women still exists in contemporary trafficking from Nigeria to Italy. But in the end, the majority of the respondents are of the view that it is difficult to argue that there are no women who are deceived because even the women who are in the first category are still deceived in some respect. In that respect, the chapters argue that Nigerian women moved into Italy for prostitution frequently consent to the movement; to

migrate but the object of such migration may differ. Based on the analysis of agency, autonomy and choice in chapter five and on the strength of the Italian definition of trafficking it may be safe to argue that poverty constrains the choices available to Nigerian women in search of a better life.

One area of unanimity amongst the participants is that Nigerian women moved into prostitution in Italy are frequently recruited through the *juju* oath ritual and are commonly subjected to debt bondage in Italy but they differ on the effect of the oath and the debt bondage on the consent of the women to migrate. Thought-provoking arguments came up with respect to the perceived effect of the *juju* oath particularly as some of the participants argue that *juju* practice as part of the everyday life of Nigerians presupposes that the women ought to understand the nature and effect of the oath.

This thesis contends that the *juju* oath constrains the choices available to Nigerian women to disengage from the relationship between them and their recruiters. Though, the women may have consented to migrate to Italy before the administration of the oath, the subsequent administration of the oath and its effect on the women amounts to coercion.

Although the debate is less contentious with respect to the issue of debt bondage, there were also issues as to its role in the movement of Nigerian women for prostitution regarding consent. One position is that if recruiters incur costs to facilitate the movement of women into Italy, it is to be expected that they will seek to recover such expenses. Whilst it may actually be naïve of any woman to assume that the recruiter should bear the cost of migration to Italy without seeking to recover such cost, findings suggest that the debt that the women are eventually made to pay is often not agreed upon. It is, therefore, difficult to advance the argument that the debt is one of a commercial nature. The other position is that, because the debt is often a unilateral imposition on the women, it is difficult to conclude that the women consented to the debt arrangement. Closely connected to the foregoing is that the debt is ever increasing at the will of the recruiter and this is what makes it debt

bondage. Although debt bondage is not listed as one of the consent nullifying elements in the Trafficking Protocol, this thesis argues that the *juju* oath and debt bondage may well qualify as '*other forms of coercion*' as provided for in the definition. However it is important to state that both Nigerian and Italian anti-trafficking legislation identify debt bondage as part of a trafficking process. But most importantly evidence from Nigeria and Italy suggest that debt bondage is commonly used as method of control over the women.

Chapters three and four affirm that Nigerian women consented to migrate but the surrounding circumstances of their recruitment through the force of the *juju* oath and being sustained in slavery through the instrumentality of both the oath and debt bondage nullifies that initial consent and is a strong indication of the recruiter's intent to traffic. The impossibility of voluntary disengagement from the migration arrangement by Nigerian women is a clear indication that agency is either non-existent or limited.

Crenshaw's (1991:1247) example of 'double subordination' suffered by migrant women involved in marriage fraud but who are forced to stay in abusive relationships in order to obtain an American resident permit or avoid deportation is insightful. Because just like those migrant women in Crenshaw's example, Nigerian women moved into prostitution under the *juju* oath ritual frequently find themselves under such circumstances that many of them for different reasons are too fearful to disengage from the traffickers or leave exploitative conditions they find themselves in Italy. And even when the women are faced with making a choice between leaving the trafficker to enjoy State protection or continued exploitation from the traffickers, the women often chose the latter. Such subordination, according to Crenshaw, need not be intentionally produced; it will suffice if 'it is frequently the consequence of the imposition of one burden that interacts with pre-existing vulnerabilities to create yet another dimension of disempowerment' (1991:1247)

And even where the fears of the women are unfounded, this thesis, based on the findings from Nigeria and Italy which suggest that Nigerian women moved into

prostitution due to a language barrier and other limitations in Italy, argue that the inability of the women to access the needed support limits the women's agency. According to Crenshaw (1991:1249), 'Language barriers present another structural problem that often limits opportunities of non-English-speaking women to take advantage of existing support services.' Findings suggest that Nigerian women moved into Italy are frequently unable to take advantage of the opportunities available to them to escape or benefit from the services due to language barrier. Inability to communicate in the Italian language is further complicated by the approach of the Italian government that requires migrant women who may have been trafficked into prostitution to renounce their trafficker and probably cooperate with the State in the prosecution of their traffickers in order to benefit from State facilitated assisted support. Crenshaw's intersectionality illustrates how what is deemed to be a State response to trafficking fails to serve its purpose because of the nationality and cultural beliefs of Nigerian women. Accordingly, intersectional feminist framework demonstrates how issues of nationality, cultural identity and class intersect to increase the vulnerability of Nigerian women trafficked into prostitution in Italy and frustrates the protection mechanism.

Whilst renunciation as a condition to enjoy State protection and or a resident permit is applicable to all non-EU migrant women trafficked into prostitution in Italy, the peculiarities of the recruitment pattern especially and their conditions in Italy makes it difficult for Nigerian women to take advantage of the programme. European women trafficked into Italy, who may also be socially or culturally privileged, are more to be able to take advantage of the protection programmes because of their nationality. But Nigerian women are socially; culturally and economically more disadvantaged than European women trafficked into Italy. Identity issues such as race and nationality of Nigerian women intersect with social, cultural and economic issues to further discriminate against them in Italy. Thus whilst European women by reason of their nationality may enjoy the status of legal resident as well as social services from the State, Nigerian women trafficked for prostitution cannot. Consequently, Nigerian women trafficked into prostitution in Italy are differently situated in the economic, social, and cultural worlds, when anti-trafficking efforts neglect these realities,

Nigerian women are more likely to be seen as consenting women.

The question at this point is, should consent to migrate be interpreted as consent to exploitation?

The Effect of Physical and Psychological Harm on Nigerian Women Moved into Prostitution

It is not in every exploitative situation that coercion is an issue, yet exploitation can be a signpost to trafficking. Such coercion may not be the only standard to determine trafficking but it must be seen as contributory factors. In this chapter, the issue is whether physical and psychological exploitation experienced by Nigerian women in the course of transit and arrival in Italy constitute coercion as to nullify the initial consent given. This thesis in line with the definition of trafficking posits that trafficking is a process based crime that has a life cycle and the last stage of it is exploitation. The Trafficking Protocol has provided for the minimum definition of exploitation but in reality this may take varied forms. It has also been mentioned elsewhere that contrary to the suggestion of the Trafficking Protocol that consent to migrate is coextensive with consent to exploitation, this thesis argues that subsequent exploitation can nullify initial consent and it is indicative of the recruiter's intent to traffic.

The psychological effect of *juju* is evidenced in the respondents' interviews as analysed in chapters five and six. But beyond the effect of the juju oath, there are other forms of harms suffered by Nigerian women moved into prostitution that are equally coercive in nature. The chapter notes that it is not unusual to have the same woman experiencing all the different forms of harms identified as exploitation, because more often than not, the same ill treatment may give rise to other forms of harm. Because most of such harms are of a continuing nature, the chapter argues that it may be problematic to separate some harms from others. This is best illustrated with the data that suggests that the women are often raped and sexually abused. Whilst the effect of physical violence is not downplayed, but according to one of the respondents, a health specialist, the most insidious forms of violence perpetrated against women moved into prostitution are those which may not necessarily involve obvious physical harm. Findings from both Nigeria and Italy

suggest that Nigerian women moved into prostitution in Italy suffer varied forms of exploitation that are described as 'debilitating'.

In order to prove that the recruiters actually intended the consequence of moving the women into prostitution, exploitation, and intention must be inferred from the circumstances under which the women are moved and the conditions under which they are made to work in Italy. Whilst intention is not a concrete thing capable of objective proof, it may be inferred from the exploitative experiences of the women. And as earlier stated, such inference may also be drawn where the woman are moved under the juju oath and debt bondage. The chapter concluded that the experiences of Nigerian women moved into prostitution do not only qualify them as trafficked victims, it also qualifies them as victims of human rights' violation. The thesis therefore posits that there can be no consent to human rights' violation.

The Effects of the Requirement of Consent on Nigerian Women Moved into Italy for Prostitution

The difference of approach between international human trafficking law and national anti-trafficking legislation on the one hand and between national anti-trafficking legislation on the other hand creates a structural dilemma that may leave actual victims of trafficking without protection. Whereas, the Trafficking Protocol provided the needed impetus for the global community to awake to the menace of trafficking and it may appear to have struck a balance between the different feminist arguments on consent and prostitution, it has failed in the area of its primary focus, dealing with the crime of trafficking and protecting the victims of trafficking. The lack of a uniform approach by States on prostitution further exacerbates the situation of women coercively moved into prostitution.

Consequently, with respect to the movement of Nigerian women into Italy for prostitution there are three likely possibilities, namely the approach of the Trafficking Protocol under which consent to a lesser extent becomes irrelevant and a right of agency may arise for an adult woman who wants to migrate to work as a prostitute; the Nigerian approach under which consent is irrelevant and where the choice of a woman to migrate to work in prostitute is subject to punitive measures. Whilst the

case of Italy is not that straightforward, data from Italy particularly suggest that for a migrant woman to work as a prostitute in Italy, regular immigration status and working within the different local policies on prostitution cannot be overemphasised.

Conclusions

The importance of locating the place of consent in the movement of Nigerian women trafficked for prostitution in Italy is underscored by the need to determine whether Nigerian women moved into prostitution are willing agents or coerced migrants. The significance of determining which category Nigerian women moved into prostitution belong is highlighted by the provisions of the Trafficking Protocol and the Smuggling Protocol complicated by the feminist debate on prostitution and trafficking for prostitution. In examining some of the conceptual issues associated with trafficking, chapter three highlights the necessity of clearly determining what constitutes trafficking as distinct from other phenomena. Clearly delineating trafficking from similar acts at the minimum, provides a clear direction on the treatment of the women and determines States obligation. The chapter for instance raises the difficulty of differentiating between smuggling and trafficking, especially on the basis of consent and argues that consent alone is not enough to clearly set trafficking apart from such other similar acts. And throughout the thesis, the difficulty of using consent as a standard to determine trafficking became more apparent.

The mapping exercise on consent under international human trafficking law suggests that the position of previous international anti-trafficking regime on consent was to make it irrelevant. From that exercise, the chapter contends that whilst the Trafficking Protocol brought about some positive changes in combating trafficking issues, the requirement of consent threatens to mar its core objectives; prevent, protect and prosecute. Following the analysis from that chapter, the chapter posits that whilst the act element of trafficking is qualified by the quality of consent, the same cannot be categorically said about the purpose element. Thus, this thesis argues that the current framing of consent under the Trafficking Protocol appears to suggest that trafficked women may have given their consent to migrate but the quality of such consent is questioned on the existence of one or more of the consent nullifying

elements.

Also, conceptualising the movement of Nigerian women for prostitution as a form of labour migration using the ILO standards, suggest that the experiences of Nigerian women in Italy at best may amount to forced labour and even that still does not promote the women's agency to consent.

This thesis argues that since invalid consent may not become evident until the women have been moved outside the shores of Nigeria, the requirement of consent should also be made applicable to the experiences of the women both in transit and at the destination country. From the participants' description of the women's experiences, this thesis argues that Nigerian women moved into prostitution in Italy suffer varying degrees of violence and human rights violation. Thus Askola states that

Initial consent issues which should be irrelevant for women who have been trafficked (as even if the victims did know that they would work in prostitution in destination country, once they arrived they are then deprived of their basic human rights) contributes to the perception that women trafficked are actually, 'migrant prostitutes', abuse of whom is taken less seriously. Summary expulsion as illegal immigrants means that, as little consideration is given to the situations to which the women are sent, their future fate in the country of origin can involve stigmatisation resulting in re-entry into prostitution (this time as a 'voluntary' 'migrant prostitute') or re-trafficking, as the victims' vulnerability towards the trafficker remains after expulsion (2007:p.20)

But the requirement of consent as currently phrased does not, on the face of it, admit of the wrongness of exploitation, thereby creating the possibility of consensual exploitation. This thesis contends that the requirement of consent should serve to protect the women, but in the context of the Trafficking Protocol, it is serving more to protect the trafficker. If trafficking is considered a crime and criminalized, it is difficult to see how the consent of the person who is most affected by the act can confer legality on the act. Consent is therefore not meant to diminish the criminal responsibility of the trafficker.

The thesis also adopts the majority participants' position that there can be no consenting to exploitation. Like the findings from Nigeria and Italy demonstrate, the *juju* oath ritual is identified by the participants as one of the key recruitment strategies

used by traffickers and according to them, such oath makes the women to appear to the world like willing agents but they are not. The effect of *juju* on the Nigerian women moved into prostitution is described as so strong as make women escape from shelter, refuse assistance, only to return to abusive conditions again. This thesis contends that the effect of the *juju* oath ritual as described by the participants is sufficient to negate valid consent. Consequently this is thesis argues that Nigerian women recruited under the *juju* oath and subjected to debt bondage as advanced by the participants constrains the women's self-will or freedom. Thus PTL1 liken the situation of Nigerian women in Italy to slavery.

To move the issues further from the current position, this thesis argues that consent should either be considered as irrelevant or a more robust regime is needed under which consent becomes relevant but not without taking into consideration the country specific pattern of organised criminality. According to Chuang (1998:85), if consent is deemed irrelevant, the women trafficked into prostitution will be better protected by the destination countries. Contrary to the position of the liberal feminist, making consent irrelevant does not deny the capacity of women to exercise their agency to work as prostitutes but it protects a wider interest, the women actually trafficked into prostitution. In that context this thesis contends that there is a higher interest at stake to combat trafficking than the promotion of contractual interest.

A foreseeable direct consequence of the requirement of consent is when it is used to distinguish between trafficking and smuggling activities, because as it currently stands consent to migrate for sex work as an expression of personal autonomy cannot be canvassed for Nigerian women under the current regime. One of the consequences of such a position is that since the women are frequently moved via irregular means, the women risk being prosecuted for violating the immigration laws of Italy. Secondly, there is also the risk of being prosecuted for organising foreign travel for prostitution which is a crime in Nigeria and the mere fact that such a person had suffered similar prosecution in Italy is not a bar to further prosecution in Nigeria. This potentially may also affect State cooperation in the area of victim protection and the effective prosecution of suspected traffickers because each State objective will

differ. Consequently, the lack of clarity of the Trafficking Protocol on consent provides destination countries like Italy with occasion to default in the proper identification of women migrants and to avoid State responsibility to protect actual victims of trafficking.

In terms of protection, therefore, Nigerian women trafficked into prostitution in Italy may find themselves in an indeterminate situation that leaves them at the mercy of their traffickers. Thus, a more direct consequence of the non-interventionist approach of the Trafficking Protocol is that a lack of a uniform approach on the subject is prejudicial to Nigerian women trafficked into prostitution in Italy. Accordingly, an inclusive distributional analysis of the place of consent, especially one that involves the range of interests and consequences on women trafficked into prostitution is needed to effectively address the transnational trafficking of women for prostitution.

Bibliography

Books

- Agustin, L. (2007). *Sex at the Margins. Migration, Labour Markets and the Rescue Industry*. London: Zed Press.
- Alamveabee, E. I. (2005). *Gender: Concepts and Issues in Nigeria*. Makurdi-Abuja-Ibadan: ABOKI Publishers
- Anderson, B., & Davidson, J. O. (2003). *Is Trafficking in Human Beings Demand Driven? A Multi-Country Pilot Study*. Geneva: International Organization for Migration.
- Andrijasevic, R. (2010). *Migration, Agency and Citizenship in Sex Trafficking*. New York: Palgrave Macmillan.
- Aradau , C. (2008). *Rethinking Trafficking in Women: Politics Out of Security*. Basingstoke, UK: Palgrave.
- Aronowitz, A. A. (2009). *human Trafficking human Misery:The Global Trade in Human Beings*. Westport: Greenwood Publishing Group.
- Askola, H. (2007). *Legal Responses to Trafficking in Women for Sexual Exploitation in the European Union*. Oxford: Hart Publishing.
- AWID. (2004). *Intersectionality: A Tool for Gender and Economic Justice*. Toronto: Association for Women's Rights in Development.
- Bales, K. (2005). *Understanding Global Slavery*. Berkeley and Los Angeles: University of California Press.
- Bales, K. (2007). *Ending Slavery: How We Free Today's Slaves*. Berkeley: University of California Press.
- Banakar, R., & Travers, M. (2005). *Theory and Method in Socio-legal Research*. Oxford, UK: Hart Publishing.
- Barry, K. (1979). *Female Sexual Slavery*, New Jersey: Prentice-Hall.
- Barry, K. (1995). *The Prostitution of Sexuality*. New York: New York: University Press.

- Barton, B. (2006). *Stripped: Inside the Lives of Exotic Dancers*. New York: New York University Press.
- Bell, S. (1994). *Reading, Writing and Rewriting the Prostitute Body*. Bloomington: Indiana University Press.
- Bindman, J. (1997). *Redefining Prostitution as Sex Work on the International Agenda*. London: Anti-Slavery International.
- British Council. (2012). *Gender in niGeria report 2012: improvinG the lives of Girls and women in Nigeria, Issues and Policies in Action*. Abuja-Nigeria: British Council nigeria.
- Bullough, V., & Bullough, B. (1987). *Women and prostitution: A social history*. Buffalo, NY: Prometheus.
- Carling, J. (2006). *Migration, Human Smuggling and Trafficking from Nigeria to Europe*. International Organisation for Migration.
- Chapkis, W (1997). *Live Sex Acts: Women Performing Erotic Labor*. New York: Routledge.
- Cohen, L. Manion, L. & Morrison K. (2000). *Research Methods in Education*. London: Routledge Falmer.
- Corbetta, P. (2003). *Social Research Theory, Methods and Techniques*. London: Sage Publications.
- Denzin, K & Lincoln, S. (eds) (2011). *The SAGE Handbook of Qualitative Research*. Thousand Oaks: Sage Publications.
- Dworkin, A. (1988) *Letters from a War Zone*. The ACLU: Bait and Switch
- Dworkin, A. (2007). *Intercourse* (1st ed.). New York: Basic Books.
- Dworkin, R. (1996). *Freedom's Law: The Moral Reading of the American Constitution* Cambridge: Harvard University Press
- Farley, M. (2003). *Prostitution, Trafficking, and Traumatic Stress*. New York: Routledge.
- Farley, M. (2007). *Prostitution and Trafficking in Nevada: Making the Connections*. San Francisco: Prostitution Research & Education.

- Farr, K. (2005). *Sex trafficking: The global market in women and children*. New York: Worth Publishers.
- Gallagher, A. (2010). *The International Law of Human Trafficking*. Cambridge: Cambridge University Press.
- Gorman, G. E., & Clayton, P. (2005). *Qualitative Research for the Information Professional* (2nd ed.). London: Facet Publishing.
- Goździak, E., & Bump, M. (2008). *Data and Research on Human Trafficking: Bibliography of Research-Based Literature*. Georgetown University: Institute for the Study of International Migration.
- Gray, D. E. (2004). *Doing Research in the Real World*. London: SAGE Publications.
- Guy, D. (1995). *Sex and Danger in Buenos Aires: Prostitution, Family and the Nation in Argentina*. Lincoln: University of Nebraska Press. Lincoln: University of Nebraska Press.
- Harding, S., & Norberg, K. (2005). *New Feminist Approaches to Social Science Methodologies*. Chicago: University of Chicago Press.
- Herzog, D. (1989). *Happy Slaves: A Critique of Consent Theory*. University of Chicago Press.
- Hesse-Biber, S. N. (2007). *Handbook of Feminist Research: Theory and Praxis*. Thousand Oaks, CA: SAGE.
- Jefferys, S. (1990). *Anticlimax: a Feminist Perspective on the Sexual Revolution*. London: The Women's Press.
- Jeffreys, S. (1997/2008). *The Idea of Prostitution*, North Melbourne, AU: Spinifex Press. North Melbourne, AU: Spinifex Press.
- Jeffreys, S. (2008). *The Industrial Vagina: The Political Economy of the Global Sex Trade*. Routledge.
- Jenness, V. (1993). *Making It Work: The Prostitutes' Rights Movement in Perspective*. New York: Aldine De Gruyter.
- Jordan, A. (2002). *The Annotated Guide to the Annotated Guide to Complete UN Trafficking Protocol*. Washington, DC: International Human Rights Law Group.

- Kara, S. (2009). *Sex Trafficking: Inside the Business of Modern Slavery*. New York: Columbia University Press.
- Kempadoo, K., & Doezema, J. (1998). *Global Sex Workers: Rights, Resistance, and Redefinition*. New York: Routledge.
- Kittichaisaree, K. (2001). *International Criminal Law*. Oxford: Oxford University Press.
- Kvale, D. (1996). *Interviews*. London: SAGE Publications.
- Lerner, G. (1986). *The Creation of Patriarchy*. Oxford: Oxford University Press.
- Lim, L. L. (1998). *The Sex Sector : the Economic and Social Bases of Prostitution in Southeast Asia*. Geneva: International Labour Organization.
- Lim, L. L. (2007). *Trafficking, Demand and the Sex Market*. Geneva: International Institute for Labour Studies (IILS) International Labour Organization.
- Limoncelli, S. A. (2010). *The Politics of Trafficking: The First International Movement to Combat the Sexual Exploitation of Women*. Stanford, California: Stanford University Press.
- Maclean, S. (2010). *Autonomy, Consent and the Law*. New York: Routledge-Cavendish.
- McCabe, K. (2008). *The Trafficking of Persons: National and International Responses*. New York: Peter Lang.
- MacKinnon, C. A. (2001). *Sex Equality: Rape Law*. New York: Foundation Press.
- MacKinnon, C. A. (2006). *Are Women Human? And Other International Dialogues*. Cambridge: Harvard University Press.
- Morris, M., & Bunjun, B. (2007). *Using Intersectional Feminist Frameworks In Research: A Resource for Embracing the Complexities of Women's Lives*. Ottawa: Canadian Research Institute for the Advancement of Women (CRIAW).
- Monzini, P. (2005). *Sex Traffic, Prostitution, Crime and Exploitation*. New York: Palgrave Macmillan.
- Nussbaum, M. (1999). *Sex and Social Justice*. Oxford: Oxford University Press.

- Oakley, A. (2000). *Experiments in Knowing: Gender and Method in the Social Sciences*. Cambridge: Polity.
- Obokota, T. (2006). *Trafficking of Human Beings from a Human Rights Perspective: Towards a Holistic Approach*, Leiden, Boston: Martinus Nijhoff Publishers.
- O'Toole, L. L., Schiffmann, J. R., & Edwards, M. L. (2007). *Gender Violence: Interdisciplinary Perspectives*. (2nd, Ed.) New York: New York University Press.
- Parrot, A., & Cummings, N. (2008). *Sexual Enslavement of Girls and Women Worldwide*. Westport: Praeger.
- Pateman, C. (1988). *The Sexual Contract*. Stanford, CA: Stanford University Press.
- Pateman, C. (1989). *The Disorder of Women: Democracy, Feminism and Political Theory*. Cambridge: Polity Press.
- Patton, M.Q. (2002). *Qualitative Research and Evaluation Methods*. Thousand Oaks, CA: Sage Publications.
- Prina, F. U. (2003). *Trade and exploitation of minors and young Nigerian women for prostitution in Italy*. Torino: United Nations Interregional Crime and Justice Research Institute (UNICRI).
- Ramazanoglu, C., & Holland, J. (2002). *Feminist Methodology Challenges and Choices*. London: Thousand Oaks, California: Sage.
- Reinharz, S. (1992). *Feminist Methods in Social Research*. Oxford: Oxford University Press.
- Ritchie, J., & Lewis, J. (2003). *Qualitative Research Practice: A Guide for Social Science Students and Researchers*. London and New Delhi: SAGE Publications.
- Sample, R. J. (2003). *Exploitation: What It Is and Why It's Wrong*. Oxford, UK: Rowman & Littlefield Publishers.
- Sarantakos, S. (2005). *Social Research* (third ed.). New York: Palgrave Macmillan.
- Scarpa, S. (2008). *Trafficking in Human Beings: Modern Slavery*. New York: Oxford University Press.

- Showden, C. R. (2011). *Choices Women Make: Agency in Domestic Violence, Assisted Reproduction, and Sex Work*. Minneapolis, MN, USA: University of Minnesota Press.
- Singleton, R. A., & Straits, B. C. (2005). *Approaches to Social Research* (fourth ed.). New York and Oxford: Oxford University Press.
- Silverman, D. (2000). *Doing Qualitative Research: A Practical Handbook*. New Delhi and London: SAGE Publications.
- Silverman, D. (2001). *Interpreting Qualitative Data* (2nd ed.). London: Sage.
- Smith, R. K. (2012). *Textbook on International Human Rights* (5th ed.). Oxford: Oxford University Press.
- Snape, D. & Spencer, L. 2003. 'The foundations of qualitative research', in J. Ritchie & J. Lewis (eds.), *Qualitative Research Practice*. London: Sage Publications.
- Touzenis, K. (2010). *Trafficking in Human Beings: Human Rights and Trans-national Crime Law, Developments in Law and Practice*. Paris: UNESCO Migration Studies 3.
- Wertheimer, A. (2003). *Consent to Sexual Relations*. Cambridge: Cambridge University Press.
- Wilkinson, S. (2003). *Bodies for Sale: Ethics and Exploitation in the Human Body Trade*. New York: Routledge.
- Zimmerman, C., Hossain, M., Yun, K., Roche, B., Morison, L., & Watts, C. (2006). *Stolen Smiles: A Summary Report on the Physical and Psychological Health Consequences of Women and Adolescents Trafficked in Europe*. London: Zimmerman, C, Hossain, M, Yun, K, Roche, B, Morison, L and Watts, C. *Stolen Smiles: A Summary Report on the Physical and Psychological Health Consequences of London School of Hygiene and Tropical Medicine*.

Book Sections

- Andrijasevic, R. (2007). EU, Problematizing Trafficking for the Sex Sector: A Case of Eastern European Women in the EU. In S. van Walsung, & T. Spijkerboer, *Women and Immigration Law: New Variations on Classical Feminist Themes* (pp. 86-103). London: Glasshouse Press.
- Arthur, S., & Nazroo, J. (2003). Designing Fieldwork Strategies and Materials. In J. Ritchie, & J. Lewis, *Qualitative Research Practice: A Guide for Social Science*

- Students and Researchers (p. 137). London: SAGE Publications.
- Asiwaju, K. (2008). The Challenges of Combating Trafficking in Women Nigeria and Children in Nigeria. In O. N. K.D, Global Trafficking in Women and Children. Boca Raton, FL: CRC Press.
- Buckland, B. S. (2009). Human Trafficking & Smuggling: Crossover & Overlap. In C. Friesendorf, Strategies Against Human Trafficking: The Role of the Security Sector (pp. 137-165). Vienna and Geneva: National Defence Academy and Australian Ministry of Defence and Sports.
- Cameron, S., & Newman, E. (2008). Understanding Human Trafficking. In S. Cameron, & E. Newman, Trafficking in Humans: Social, Cultural, and Political Dimensions (pp. 1-20). United Nations University Press.
- Cauduro, A., Di Nicola, A., Fonio, C., Nuvoloni, A., & Ruspini, P. (2009). Innocent When You Dream: Clients and Trafficked Women in Italy. In , A. Di Nicola, A. Cauduro, M. Lombardi, & P. Ruspini, Prostitution and Human Trafficking: Focus on Clients . New York : Springer.
- Crenshaw, K. W. (1995). Mapping the Margins: Intersectionality, Identity Politics and Violence against Women of Colour. In K. Crenshaw, N. Gotanda, G. Peller, & K. Thomas, Critical Race Theory: The Key Writings that Informed the Movement (pp. 357-383). New York: New York Press.
- Crowhurst, I. (2006). The provision of protection and settlement services for migrant women trafficked for sexual purposes: the case of Italy. In Kareen, Beeks and Delila Amir, Trafficking & the Global Sex Industry (pp. 217-236). London: Lexington Books.
- Davidson, O. J., & Anderson, B. (2006). The Trouble with Trafficking. In C. L. Van Den Anker, & J. Doomernik, Trafficking and Women's Rights (pp. 11-26). New York: Palgrave Macmillan.
- Ditmore, M. (2005). Trafficking in Lives: How Ideology Shapes Policy, in Trafficking and Prostitution in Kempadoo, K, Sanghera, J & Pattanaik, B. (2005) Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights, Boulder, London: Paradigm Publishers.

- Ditmore, M. (2005). Trafficking in Lives: How Ideology Shapes Policy, in Trafficking and Prostitution in Kempadoo, K, Sanghera, J & Pattanaik, B. (2005) Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights, Boulder, London: Paradigm Publishers.
- Doezema, J. (1998). Forced to Choose: Beyond the Voluntary v. Forced Prostitution Dichotomy. In K. Kempadoo, & J. Doezema, Global Sex Workers (pp. 34–50). New York: Routledge.
- Drakopoulou, M. (2007). Feminism and Consent: A Genealogical Inquiry . In R. A Hunter, Choice and Consent: Feminist Engagements With Law and Subjectivity (p. 3). New York: Routledge.Cavendis.
- Jaggar, A. M. (1991). Feminine Ethics: Projects, Prospects. In C. Cards (ed) Feminist Ethics (pp.78-104), Lawrence: University of Kansas Press.
- Jeffreys, S. (2006). The Traffic in Women: Human Rights Violation or Migration for Work? In A. Agrawal, Migrant Women and Work: Women and Migration in Asia (Vol. 4). New Delhi: SAGE Publications Ltd.
- Kelly, L. (2005). “You Can Find Anything You Want”: A Critical Reflection on Research on Trafficking in Persons within and into Europe. In F. Laczko , & E. Gozdziaik, Data and Research on Human Trafficking: A Global Survey (pp. 235-266). Geneva: International Organization for Migration.
- Kempadoo, K, Sanghera, J & Pattanaik, B. (2005) Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights, Boulder, London: Paradigm Publishers.
- Kempadoo, K. (2005). Introduction: From Moral Panic to Global Justice: Changing Perspectives on Trafficking, in Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights (Kempadoo, Sanghera and Pattanaik (eds.) (pp. , vii-xxxiv). London:Paradigm Publishers, Boulder.
- Konrad, H. (2006). Trafficking in Human Beings: A Comparative Account of Legal Provisions in Belgium, Italy, the Netherlands, Sweden and the United States. In C. Van den Anker, & J. Doomernik, Trafficking and Women’s Rights. Hampshire: Palgrave Macmillan.
- Laczko, F. (2005). Introduction. In F. Laczko , & E. Gozdziaik, Data and Research on Human Trafficking: A Global Survey. (pp.5-16). Geneva:

International Organization for Migration.

- MacKinnon, C. A. (1993). On Torture: A Feminist Perspective on Human Rights. In K. a. Mahoney, *Human Rights in the Twenty-First Century: A Global Perspective* (p. 5). Dordrech: Martinus Nijhoff Publishers.
- Munro, V. E., & Giusta, M. D. (2008). The Regulation of Prostitution: Contemporary Contexts and Comparative Perspectives. In V. E. Munro, & M. D. Giusta, *Demadning Sex: Critical Reflection on the Regulation of Prostitution* (pp. 1-12).
- Noll, G. (2007). The Insecurity of Trafficking in International Law. In V. Chetail, *Globalization, Migration and Human Rights: International Law Under Review* (p. 343). Geneva: Geneva Academy of International Law and Human Rights.
- Outshoorn, J. (2011). The Politics of Prostitution Revisited: Trends in Policy and Research. In A. G. Jónasdóttir, V. Bryson, & K. B. Jones, *Sexuality, Gender and Power: Intersectional and Transnational Perspectives* (pp. 127-141). Routledge.
- Raymond , J. (2002). Intersections between migration and trafficking. In J. Raymond, *Comparative Study of Women Trafficked in the Migration Process. Patterns, Profiles and Health Consequences of Sexual Exploitation in Five Countries (Indonesia, the Philippines, Thailand, Venezuela and the United States)* (pp. 8-15). Coalition against Trafficking in Women.
- Ritchie, J. (2003). The Applications of Qualitative Methods to Social Research. In J. Ritchie, & J. Lewis, *Qualitative Research Practice: A Guide for Social Science Students and Researchers* (pp. 1-18). London: SAGE Publications.
- Rock, P. (2002). On Becoming a Victim. In C. Hoyle, & R. Young, *New Visions of Crime Victims* (pp. 1-22). Oxford, UK: Hart.
- Salt, J. (2000). Trafficking and Human Smuggling. In R. A. Salt, *A European Perspective. Perspectives on Trafficking of Migrants* (pp. 31-56). Geneva: IOM and OIM.
- Salt, J., & Hogarth., J. (2000). Migrant Trafficking and Human Smuggling in Europe : A Review of the Evidence. In F. Laczko , & D. Thompson , *Migrant Trafficking and Human Smuggling in Europe : a Review of Evidence with Case Studies from Hungary, Poland and Ukraine* (pp. 11-164). Geneva: IOM.
- Shelley, L. (2009). Human Security and Human Trafficking. In A. Johnson, *Human Trafficking and Human Security* (pp. 10-25). New York: Routledge.

Tyldum, G., & Brunvoski, A. (2005). The Unobserved: Methodological Challenges in Empirical Studies on Human Trafficking. In F. Laczko, & E. Gozdzia, *Data and Research on Human Trafficking: A Global Survey*. Geneva: International Organization for Migration.

Weber, L., & Parra-Medina, D. (2003). Intersectionality and Women's Health: Charting A Path To Eliminating Health Disparities. In V. D. Marcia Texler Segal, *Gender Perspectives on Health and Medicine (Advances in Gender Research, Volume 7)* (pp. 181-230). Emerald Group Publishing Limited.

Journal Articles

Abramson, K. (2003). Beyond Consent, Towards Safeguarding Human Rights: Implementing The UN Trafficking Protocol. *Harvard International Law Journal*, vol. 44, no. 2, pp. 473-502.

Agbu, O. (2003). Corruption and Human Trafficking: The Nigerian Case. *West African Review*, vol. 4 no. 1, pp.1-13.

Aghatise, E. (2004). Trafficking for Prostitution in Italy: Possible Effects of Government Proposals for Legalization of Brothels. *Violence against Women*, vol. 10, no.10, pp. 1126-1155.

Aghatise, E. (2005). Women Trafficking from West Africa to Europe: Cultural Dimensions and Strategies. *MOZAIK*, pp.14-16.

Agustin, L. (2005). Migrants in the Mistress's house: Other Voices in the "trafficking" Debate. *Social Politics*, vol. 12, no.1, pp. 96-117.

Akor, L. (2011). Trafficking of Women in Nigeria: Causes, Consequences and the Way Forward. *Corvinus Journal of Sociology and Social Policy*, vol. 2, no.2, pp.89–110.

Alston, P. (2005). Facing up to the Complexities of the ILO's Core Labour Standards Agenda. *European Journal of International Law*, vol. 16, no.3, pp.467–480.

Allain, J. (2008). Book Review: (reviewing Kevin Bales, *Understanding Global Slavery: A Reader* (2005), *International Journal of Refugee Law*, vol.20, pp. 228-232

Amiel, A. (2006). Integrating a Human Rights Perspective into the European Approach to Combating the Trafficking of Women for Sexual Exploitation. *Buffalo Human Rights Law Review*, vol.12, pp. 5-59.

- Archard, D. (2008). Informed Consent: Autonomy and Self-Ownership. *Journal of Applied Philosophy*, vol.25, no.1, pp. 19-34.
- Askola, L. (2007). Violence against Women, Trafficking, and Migration in the European Union. *European Law Journal*, vol. 13, no.2, pp.204–217.
- Attoh, F. (2009). Trafficking in Women in Nigeria: Poverty of Values or Inequality? *Journal of Social Science*, vol. 19, no.3, pp.167-171.
- Balos, B. (2004). 'The Wrong Way to Equality: Privileging Consent in the Trafficking of Women for Sexual Exploitation'. *Harvard Women's Law Journal* vol.27, pp.137-175
- Bakirci, K. (2009). Human Trafficking and Forced Labour: a Criticism of the International Labour Organisation'. *Journal of Financial Crime*, vol.16, no.2, pp.160 – 165
- Berger, S. M. (2012). No End In Sight: Why The "End Demand" Movement Is The Wrong Focus For Efforts To Eliminate Human Trafficking. *Harvard Journal Of Law & Gender*, vol.35, no.2, pp. 523-570.
- Bertone, A. M. (2004). Transnational Activism to Combat Trafficking in Persons. *Brown Journal of World Affairs*, vol.10, no.2, pp. 9-20.
- Bravo, K. E. (2009). Free Labor! A Labor Liberalization Solution to Modern Trafficking in Humans. *Transnational Law and Contemporary Problems*, vol. 18, no.xxx, pp.101-171
- Bravo, K.E (2011). The Role of the Transatlantic Slave Trade in Contemporary Anti-Human Trafficking Discourse, *Seattle Journal for Social Justice*, vol.9, no.2, pp.555-597
- Bruch, E. M, (2004). Models Wanted: The Search for an Effective Response to Human Trafficking. *Stanford Journal of International Law*, vol.40, pp.1-45
- Chacón , J. M. (2010). Tensions and Trade-Offs: Protecting Trafficking Victims in the Era of Immigration Enforcement. *University of Pennsylvania Law Review*, vol.158, pp.1609-1650.
- Charlesworth, H., Chinkin, C., & Wright, S. (1991). Feminist Approaches to International Law. *American Journal of International Law*, vol.85, no.4, pp. 613-645

- Choo, H. Y., & Ferree, M. M. (2010). Practicing Intersectionality in Sociological Research: A Critical Analysis of Inclusions, Interactions, and Institutions in the Study of Inequality. *Sociological Theory*, vol.28, pp.129-149.
- Chuang, , J. (1998). Redirecting the Debate over Trafficking in Women : Definitions, Paradigms and Contexts. *Harvard Human Rights Journal*, vol.11, pp.65-107.
- Chuang, J. (2006). Beyond a Snapshot: Preventing Human Trafficking in the Global economy. *Ind. J. Global Legal Studies*, vol.13, no.1, pp.137-163
- Chuang, J. (2010). Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy, *University of Pennsylvania Law Review*, Vol.158, pp.1655-1728.
- Cianciarulo, M. S. (2008). What is Choice? Examining Sex Trafficking Legislation Through the Lenses of Rape Law and Prostitution. *University of St. Thomas Law Journal*, vol. 6, no.1, pp.54-78.
- Cole, A. (2005). Reconceptualizing Female Trafficking: The Inhuman Trade in Women. *Women's Rights Law Reporter*, vol.26, no. 2 & 3, pp.95-120; (2005-2006) *Cardozo Journal of Law & Gender*, vol.12, no.3, pp.789-820
- Cole, J. (2006). Reducing the Damage: Dilemmas of Anti-Trafficking Efforts among Nigerian Prostitutes in Palermo. *Anthropologica*, vol.48, no.2, pp. 217-228.
- Corrigan, K. (2001). Putting the Brakes on the Global Trafficking of Women for the Sex Trade: An Analysis of the Existing Regulatory Schemes to Stop the Flow of Traffic. *Fordham International Law Journal*, vol.25, no.1, pp.151-214
- Crenshaw, K. W. (1988). Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law. *Harvard Law Review*, vol.101, no.7, pp.1331-1387.
- Crenshaw, K. W. (1989) Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics. *University of Chicago Legal Forum*, pp.139-67
- Crenshaw, K. W. (1991). Mapping the Margins: Intersectionality, Identity, Politics and Violence Against Women of Color. *Stanford Law Review*, vol.43, pp.1241-99.
- Crowhurst, I. (2012). Approaches to the regulation and governance of prostitution in contemporary Italy. *Sexuality Research and Social Policy*, vol.9, no.3, pp.223-232.

- Crowhurst, I. (2012). Caught in the victim/criminal paradigm: female migrant prostitution in contemporary Italy. *Modern Italy*, vol.17, no.4, pp.493-506.
- Cwikel, J., Chudakov, B., Paikin, M., Agmon, K., & Belmaker, R. (2004). Trafficked Female Sex Workers awaiting Deportation: Comparison with Brothel Workers. *Arch Women Mental Health*, vol. 7, no.4, pp.243–249
- Davis, K. (2008). Intersectionality as a buzzword: A sociology of science perspective on what makes a feminist theory successful. *Feminist Theory*, vol.9, no.1, pp. 67–85.
- Defeis, E. (2004). Women's Human Rights Violations and Sex Trafficking, Protocol to Prevent, Suppress and Punish Trafficking in Persons-A New Approach, *ILSA Journal of International & Comparative Law*, vol.10, p. 485
- Dillon, S. (2008). What Human Rights Law Obscures: Global Sex Trafficking and the Demand for Children. *UCLA Women's Law Journal*, vol.17, pp.122-185.
- Doezema, J. (2000). Loose Women or Lost Women? The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women, *Gender Issues*, vol.18, pp.23-50
- Doezema, J. (2005). Now You See Her, Now You Don't: Sex Workers at the UN Trafficking Protocol Negotiation, *Social & Legal Studies* 2005, vol.14, pp. 61-89
- Drew, S. (2002). Human Trafficking: A Modern Form of Slavery? *European Human Rights Law Review*, vol. 4, pp. 481-492
- Ekberg, G. (2004). The Swedish law that prohibits the purchase of sexual services: Best Practices for Prevention of Prostitution and Trafficking in Human Beings. *Violence Against Women*, 10, 1187-1218.
- Elabor-Idemudia, P. (2002). Race and Gender Analysis of Trafficking: A Case Study of Nigeria. *Canadian Women Studies*, vol.22, no.3/4, pp.115-123.
- Elias, J. (2007). Women Workers and Labour Standards: The problem of Human Rights. *Review of International Studies*, vol.33, pp.45-57.
- Elliot, C., & De Than, C. (2007). The Case for a Rational Construction of Consent in Criminal Law. *Modern Law Review*, vol.70, no.2, pp. 225-249

- Ericsson , L. (1980). Charges against Prostitution: An Attempt at a Philosophical Assessment. *Ethics*, vol. 90, pp.335–66.
- Eskridge, W. N. (1995). The Many Faces of Sexual Consent. *William and Mary Law Review*, vol.37, no.1, pp.47-68
- Etim, O.F & Ukpere, W.I. (2012). The Impact of Military Rule on Democracy in Nigeria. *Journal of Social Science*, vol.33, no.3, pp.285-292
- Farley, M. (2004). "Bad for the Body, Bad for the Heart": Prostitution Harms Women Even if Legalized or Decriminalized. *Violence Against Women*, vol.10, pp.1087 - 99 .
- Fayemi, A. K. (2009). The Challenges of Prostitution and Female Trafficking in Africa: An African Ethico-Feminist Perspective. *The Journal of Pan African Studies*, vol.3, no.1, pp. 200-214.
- Fredette, K. (2009). Revisiting the UN Protocol on Human Trafficking: Striking Balances for More Effective Legislation. *Cardozo Journal of International Law & Comparative Law*, vol. 17, pp.101-134
- Freeman, J. (1989-90). The Feminist Debate Over Prostitution Reform: Prostitutes' Rights Groups, Radical Feminists, and the (IM) possibility of Consent, *Berkeley Women's Law Journal*, vol. 5, pp.75-109.
- Fitzpatrick, J. (2002-2003). Trafficking as a Human Rights Violation: The Complex Intersection of Legal Frameworks for Conceptualizing and Combating Trafficking, *Michigan Journal of International Law*, vol.24, pp. 1143-1167
- Gaie, J. B. (2013). African Feminist Philosophy: The Creation of a Moral Confusion. *European Scientific Journal*, February, vol.9, no.5, pp.203-226.
- Gallagher, A.T. (2001). Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis, *Human Rights Quarterly*, vol.23, pp.975-1004.
- Gallagher, A.T. (2002). Trafficking, Smuggling and Human Rights: Tricks and Treaties. *Forced Migration Review*, vol.12, pp.25-28
- Gallagher, A.T. (2009). Human Rights and Human Trafficking: Quagmire or Firm Ground? A Response to James Hathaway. *Virginia Journal of International Law*, vol.50, no.1, pp. 789-848.
- Gallagher, A., & Holmes, P. (2008). Developing an Effective Criminal Justice

Response to Human Trafficking : Lessons From the Front Line. *International Criminal Justice Review*, vol.18, no.3, pp.318-343

Gozdziak, E. M. (2008). On Challenges, Dilemmas, and Opportunities in Studying Trafficked Children. *Anthropological Quarterly*, 81(4), 903-923.

Gozdziak, E. M., & Collet, E. A. (2005). Research on Human Trafficking in North America: A Review of Literature. *International Migration*, vol.43, no.1-2), pp.99–128.

Hancock , A. (2007). Intersectionality as a normative and empirical paradigm. *Politics and Gender*, vol.3, no.2, pp. 248–253.

Hancock, A. (2007). When Multiplication Doesn't Equal Quick Addition: Examining Intersectionality as a Research Paradigm. *Perspectives on Politics*, vol.5, 1, pp.63-79.

Hathaway, J. C. (2008). The Human Rights Quagmire of “Human Trafficking”. *Virginia Journal of International Law*, vol.49, pp.1-61

Herndndez-Truyol, B. E. (2002). Out Of The Shadows: Traversing The Imaginary of Sameness, Difference, and Relationalism - A Human Rights Proposal. *Wisconsin Women's Law Journal*, vol.17, pp.111-162.

Howard-Hassmann, R. E. (2011). Universal Women's Rights Since 1970: The Centrality of Autonomy and Agency. *Journal of Human Rights*, vol.10, pp. 433–449.

Hughes, D. (2000). The Natasha Trade: The Transnational Shadow Market of Trafficking in Women. *Journal of International Affairs*, vol.53, no.2, pp. 1–18.

Hyland, K. E. (2001). The Impact of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. *Human Rights Brief*, vol.8, no.2, pp.30-38.

Jefferys, S. (2009). Prostitution, Trafficking and Feminism: An Update on the Debate. *Women's Studies International Forum*, vol.32, pp.316–320.

Jenness, V. (1990) From Sex as Sin to Sex as Work: COYOTE and the Reorganization of Prostitution as a Social Problem *Social Problems* vol.37, no.3, pp.403- 420.

Jolly, J. (2011). Fighting Crime or a Fight for Rights? Assessing the Human Rights

Value of the UN Protocols on Trafficking in Persons and Migrant Smuggling. *Queensland Law Student Review*, vol.4, no.2, pp.104-118.

Kelly, L. (2003). The Wrong Debate: Reflections on Why Force is Not the Key Issue with Respect to Trafficking in Women for Sexual Exploitation. *Feminist Review*, vol.73, pp.139-144.

Kelly, L. (2005). "You Can Find Anything You Want": A Critical Reflection on Research on Trafficking in Persons within and into Europe. *International Migration*, vol.43, no.1-2, pp.235–265.

Kempadoo, K. (2001). Women of Color and the Global Sex Trade: Transnational Feminist Perspectives. *Meridians*, vol.1, pp.28-51.

Kempadoo, K. (2007). The War on Human Trafficking in the Caribbean. *Race & Class*, vol.49, no.2, pp.79–85.

Kim, K. (2011). The Coercion of Trafficked Workers. *Iowa Law Review*, vol.96, pp.409-474

Leidholdt, D. A. (2003). Prostitution and Trafficking in Women: An Intimate Relationship. *Journal of Trauma Practice*, vol.2, no.3/4, pp.167-183.

Limoncelli, S. (2009). The Trouble with Trafficking: Conceptualizing Women's Sexual Labor and Economic Human Rights. *Women's Studies International Forum*, vol.32, pp.261–269.

Lobasz, J. K. (2009). Beyond Border Security: Feminist Approaches to Human Trafficking. *Security Studies*, vol.18, pp.319–344.

Long, D. (2004). Anthropological Perspectives on the Trafficking of Women for Sexual Exploitation. *International Migration*, vol.42, no.1, pp. 5-31.

MacKinnon, C. A. (2011). Trafficking, Prostitution and Inequality. *Harvard Civil Rights-Civil Liberties Law Review*, vol.46, pp.272-309

MacKinnon, C. A. (1993). Prostitution and Civil Rights. *Michigan Journal of Gender & Law*, vol.1, pp.1-22.

MacKinnon, C. A. (2006). Women's September 11th: Rethinking the International Law of Conflict. *Harvard International Law Journal*, vol. 47, no.1, pp.1-31

Mattar, M.Y. (2006). Incorporating the Five Basic Elements of a Model Antitrafficking In Persons Legislation in Domestic Laws: From the United Nations Protocol to

the European Convention. *Tulane Journal of International and Comparative Law*, vol.14, 357-419.

Mattar, M.Y. (2011-2012). Human Rights Legislation in the Arab World: The Case of Human Trafficking Special Symposium Feature: Successes and Failures in International Human Trafficking Law: Essay. *Michigan Journal of International Law*, vol.33, no.1, pp.132

Meaux, J. B., & Bell, P. L. (2001). Balancing Recruitment and Protection: Children as Research Subjects. *Issues in Comprehensive Pediatric Nursing*, vol.24, no.4, pp.241-251.

Miller, J. (2006). Slave trade: Combating human trafficking. *Harvard International Review*, vol.27, no.4, pp. 70-73.

Munro, V. (2006). Stopping Traffic?: A Comparative Study of Responses to the Trafficking in Women for Prostitution. *British Journal of Criminology*, vol.46, no.2, pp. 318-333.

Munro, V. (2008). 'Constructing Consent: Legislating Freedom and Legitimizing Constraint in the Expression of Sexual Autonomy', *Akron Law Review*, vol. 41, pp.923-956

Murphy, S. (2001). International Trafficking in Persons, Especially Women and Children. *The American Journal of International Law*, vol.95, no.2, pp. 407-410.

Nagle, L. (2008). Selling Souls: The Effect of Globalization on Human Trafficking and Forced Servitude. *Wisconsin International Law Journal*, vol. 26, no.1 pp.131-162

Nelson, E. K. (2001-2002). Sex Trafficking and Forced Prostitution: Comprehensive New Legal Approach. *Houston Journal of International Law*, vol.24, no.3, pp. 551-578 .

O'Connell Davidson, J. (2002). The Rights and Wrongs of Prostitution. *Hypatia*, vol.17, no.2, pp.84-98

Okojie, C. E. (2009). International Trafficking of Women for the Purpose of Sexual Exploitation and Prostitution the Nigerian Case. *Pakistan Journal of Women's Studies Alame-Niswan*, vol.16, nos.1&2, pp.147-178

- Okonofua, F. E., Ogbomwan, S. M., Alutu, A. N., Kufre, O., & Aghahowa, E. (2004). Knowledge, Attitudes, and Experiences of Sex Trafficking by Young Women in Benin . *Social Science & Medicine*, 59(6), 1315- 1327.
- Outshoorn, J. (2005). The Political Debates on Prostitution and Trafficking of Women. *Social Politics*, vol.12, no.1, pp.141–155.
- Overall, C. (1992). What's wrong with prostitution? Evaluating Sex Work. *Journal of Women in Culture and Society*, vol.17, pp.705-72.
- Pateman, C. (1999). What's Wrong with Prostitution?. *Women's Studies Quarterly*, Vol. 27, no. 1/2, pp. 53-64
- Rao, P. S. (2004). Multiple International Judicial Forums: A Reflection of the Growing Strength of International Law or Its Fragmentation? *Michigan Journal of International Law*, vol. 25, pp.929-962
- Rassam, Y. (2005). International Law and Contemporary Forms of Slavery: An Economic and Social Rights Based Approach. *Penn. St. Inter Law Rev*, vol.23, pp.809-850
- Raviv, T. (2003). Symposium: International Trafficking in persons: A Focus on Women and Children the Current Situation in the Recent Legal Response. *Cardozo Women's Law Journal*, vol. 9, pp.659.
- Ray, N. (2006). Looking At Trafficking Through A New Lens. *Cardozo Journal of Law & Gender*, vol.12, no.3, pp. 909-928
- Raymond, J. G (2003). Ten Reasons for not Legalizing Prostitution and a Legal Response to the Demand for Prostitution. *Journal of Trauma Practice*, vol.2, pp.315–322.
- Raymond, J. G. (2004). Prostitution on Demand: Legalizing the Buyers as Sexual Consumers. *Violence Against Women*, vol.10, no.10, pp.1156–1186.
- Saunders, P. (2005). Traffic Violations : Determining the Meaning of Violence in Sexual Trafficking Versus Sex Work. *Journal of Interpersonal Violence*, vol.20, pp.343-360.
- Schauer, E., & Wheaton, E. (2006). Sex Trafficking into the United States: a Literature Review. *Criminal Justice Review*, vol.31, no.1, pp.1–24.

- Schroeder, J. L. (1998). Feminism Historicized: Medieval Misogynist Stereotypes in Contemporary Feminist Jurisprudence. *Iowa Law Review*, vol.75, pp.1135-1218.
- Schwarzenbach, S. (1990-1991). Contractarians and Feminists Debate Prostitution. *New York University Review Law & Social Change*, vol.18, pp.103-128.
- Scoular, J. (2004). The “Subject” of Prostitution: Interpreting the Discursive, Symbolic and Material Position of Sex/Work. *Feminist Theory*, vol.5, pp.343, 352.
- Segrave, M. (2009). Order at the Border: The Repatriation of Victims of Trafficking. *Women’s Studies International Forum*, vol.32, pp.251–260.
- Sharma, N. (2005). Anti-Trafficking Rhetoric and the Making of a Global Apartheid. *NWSA Journal*, vol.17, no.3, pp.88-111 .
- Shaver, F. M. (2005). Sex Work Research: Methodological and Ethical Challenges. *Journal of Interpersonal Violence*, vol.20, no.3, pp. 296-319.
- Shelley, L. (2003-2004). Trafficking in Women: The Business Model Approach. *Brown Journal of World Affair*, vol. 10, pp.119-132.
- Simien, E. (2007). Doing intersectionality research: From conceptual issues to practical examples. *Politics & Gender*, vol.3, no.2, pp.264–271.
- Sloan, L., & Wahab, S. (2000). Feminist Voices on Sex Work: Implications for Social Work. *Affilia*, vol.15, pp.457-479
- Srikantiah, J. (2007). Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law. *Boston University Law Review*, vol. 87, no.1, pp.157-212
- Steinbugler , A. C., Press , J. E., & Dias , J. J. (2006). Gender, Race and Affirmative Action: Operationalizing Intersectionality in Survey Research. *Gend & Society*, vol.20, no.6, pp. 805-825.
- Sullivan, B. (2003). Trafficking in Women, Feminism and New International Law. *International feminists Journal of Politics*, vol.5, pp.67-91.
- Taslitz, E.A. (1998). A Feminist Approach to Social Scientific Evidence: Foundations, *Michigan Journal of Gender & Law*, vol. 5, pp.1-25.

- Tiefenbrun, S. (2002). The Saga of Susannah A U.S. Remedy for Sex Trafficking in Women: The Victims of Trafficking and Violence Protection Act of 2000. *Utah Law Review*, pp. 107-175.
- Tiefenbun, S. (2001). Sex Sells but Drugs Don't Talk: Trafficking of Women Sex Workers. *Thomas Jefferson Law Review*, vol.23, no.2, pp.199-226
- Todres, J. (2005-2006). Importance of Realizing Other Rights to Prevent Sex Trafficking. *Cardozo Journal of Law & Gender*, vol.12, no.3, pp.885-908
- Todres, J. (2010-2011). Moving Upstream: The Merit of a Public Health Law Approach to Human Trafficking. *North Carolina Law Review*, vol.89, no.2, pp. 447-506
- Todres, J. (2011-2012). Widening Our Lens: Incorporating Essential Perspectives in the Fight against Human Trafficking. *Michigan Journal of International Law*, vol. 33, no.1, pp.53-76.
- Troshynski, E. I., & Blank, J. K. (2008). Sex Trafficking: an Exploratory Study Interviewing Traffickers. *Trends Organized Crime* , vol.11, pp.30-41.
- Turner, & Kelly, L. (2009). Trade Secrets: Intersections between Diasporas and Crime Groups in the Constitution of the Human Trafficking Chain. *British Journal of Criminology*, vol.49, pp.184-201.
- Tyldum, G. (2010). Limitations in Research on Human Trafficking . *International Migration* , vol.48, no.5, pp.1-14.
- Twitty, C. Y. (2003-2004). Pretty Pennies for Pretty Faces: Trafficking of Women for the International Sex Trade. *RegentJournal of International Law* , vol.2, pp.115-144.
- Valdman, M. (2009). A Theory of Wrongful Exploitation. *Philosophers Imprint*, vol.9, no.6, pp. 1-14.
- Van Impe, K. (2000). People for Sale: The Need for a Multidisciplinary Approach Towards Human Trafficking. *International Migration* , vol.38, no.3, pp. 113-131.
- Watts, C., & Zimmerman, C. (2002). Violence Against Women: Global Scope and Magnitude. *The Lancet*, vol.359, pp.1232–1237.
- Weitzer, R. (2005). Flawed Theory and Method in the Studies of Prostitution. *Violence against Women*, vol.11, no.7, pp. 934-949.

- Weitzer, R. (2005). The Growing Moral Panic Over Prostitution and Sex Trafficking. *The Criminologist*, vol.30, no.5, pp.2-5.
- Weitzer, R. (2010). The Mythology of Prostitution: Advocacy Research and Public Policy. *Sex Research Social Policy*, vol. 7, pp.15-29.
- West, R. (2000). The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory. *Wiscousin Women's Law Journal*, vol.15, pp.149-215.
- Western, P. (2004). Some Common Confusions About Consent in Rape Cases. *Ohio State Journal of Criminal Law*, vol.2, pp.333-359.
- Wheaton, E. M., Schauer, E. J., & Galli, T. V. (2010). Economics of Human Trafficking. *International Migration*, vol.48, no.4, pp.114-141
- Wilson, T. (1997). Rape for Profit: Trafficking of Nepali Girls and Women to India's Brothels. *The International Migration Review*, vol.31, no.2, pp.490.
- Yuval-Davis , N. (2006). Intersectionality and Feminist Politics. *European Journal of Women's Studies*, vol.13, no.3, pp.193-209.
- Zimmermann, C., & Watts, C. (2004). Risks and Responsibilities: Guidelines for Interviewing Trafficked Women. *The Lancet* , vol.363, pp.363: 565.

International Reports

- British Council. (2012). Gender in niGeria report 2012: improvinG the lives of Girls and women in Nigeria, Issues and Policies in Action. Abuja-Nigeria: British Council Nigeria.
- ILO. (2008). ILO against Trafficking in Human Beings . Geneva: International Labour Oranization.
- ILO. (2012). ILO Global Estimate of Forced Labour. Geneva: International Labour Organization.
- IOM. (2002). Trafficking for Sexual Exploitation: The Case of the Russian Federation. Geneva: International Organization for Migration.
- IOM. (2011). Trafficking and Assistance to Vulnerable Migrants: Annual Report for Activities 2011. Geneva: International Organization for Migration.
- Landinfo. (2006). Trafficking in Women – Fact-finding trip to Nigeria (Abuja, Lagos

and Benin City). Norway: Landinfo.

UNESCO. (2006). Human Trafficking in Nigeria: Root Causes and Recommendations. Paris: United Nations Educational, Scientific and Cultural Organisation.

UNICRI. (2003). Report of field survey in Edo State, Nigeria. Torino: United Nations Interregional Crime and Justice Research Institute (UNICRI)

UNICRI. (2010). Trafficking of Nigerian Girls in Italy. The Data, the Stories, the Social Services. Turin: United Nations Interregional Crime and Justice Research Institute.

UNODC & UN.Gift. (2008). Human Trafficking: An OverView. Vienna and New York: UNITED NATIONS OFFICE ON DRUGS AND CRIME and Global Initiative to Fight Human Trafficking .

UNODC. (2009). Transnational Trafficking and the Rule of Law in West Africa: A Threat Assessment. United Nations Office on Drugs and Crime.

UNODC. (2010). The Globalization of Crime: A Transnational Organised Crime Threat Assessment. Vienna: United Nations Office on Drugs and Crime.

UNODC. (2012). Global Report on Trafficking in Persons. Vienna: United Nations Office on Drugs and Crime.

USDOS. (2012). Trafficking in Persons Report. United States of America Department of State.

USDOS. (2010). Trafficking in Persons Report. United States of America Department of State.

USDOS. (2009). Trafficking in Persons Report. United States of America Department of State.

USDOS. (2008). Trafficking in Persons Report. United States of America Department of State.

WHO. (2007). Multi Country Study on Women's Health and Domestic Violence against Women. Geneva: World Health Organization.

WHO. (2000). Putting Women First: Ethical and Safety Recommendations for Research on Domestic

Violence Against Women. Geneva: World Health Organization.

Web Based Resource

- Allen, L. (2007, April 17). Nigeria's 'Respectable' Slave Trade. BBC News. http://news.bbc.co.uk/1/hi/programmes/from_our_own_correspondent/3632203.stm (last accessed 10/12/2013)
- Carling, J. (2005, July). Trafficking in Women from Nigeria to Europe . Retrieved July 17, 2010, from <http://www.migrationinformation.org/feature/display.cfm?ID=318> (last accessed 20/10/2013)
- HRW. (2010, August 26). Côte d'Ivoire/Nigeria: Combat Trafficking for Prostitution. Retrieved September 6, 2013, from Human Rights Watch: <http://www.hrw.org/news/2010/08/26/c-te-d-ivoirenigeria-combat-traffic-king-prostitution> (last accessed 20/10/2013)
- Huges, D. (2005, June). The Demand for Victims of Sex Trafficking. Retrieved July 2, 2012, from http://www.uri.edu/artsci/wms/hughes/demand_for_victims.pdf (last accessed 10/09/2012).
- ILO & EC (2009). Operational Indicators of Trafficking in Human Beings. International Labour Office and the European Commission. http://www.ilo.org/sapfl/Informationresources/Factsheetsandbrochures/WCMS_105023/lang--en/index.htm (last accessed 24/09/2014)
- Naijafeed. (2009, August 23). Nigeria is the largest African source of trafficked women to Europe and Asia. Retrieved June 27, 2013, from NAIJAFEED: http://www.naijafeed.com/2009/08/nigeria-is-largest-african-source-of_2072.html (last accessed 20/03/2013)
- Pimentel, B. (2003). Temporary workers sue HP over overtime pay. San Francisco Chronicle (January 22):
Bl. <http://www.sfgate.com/business/article/Temporary-workers-sue-HP-over-overtime-pay-2639704.php> (last accessed 20/02/2012)
- Sullivan, B. (2011). Lawyer turns topless dancer to pay the bills. NBC News. <http://www.nbcnews.com/technology/lawyer-turns-topless-dancer-pay-bills-6C10406925> (last accessed 19/09/2013)
- Transparency International. (2011). Corruption and Human Trafficking. Transparency

International. http://www.transparency.org/whatwedo/pub/working_paper_corruption_and_human_trafficking (last accessed 10/10/2012)

GLOSSARY OF TERMS

Acceptance: the unconditional agreement to the terms contained in an offer that creates a legally binding contract.

Agency: feminists' theory of women's capacity to make choice and take action.

Agent: a person that is appointed to act on behalf of another person (often known as the principal).

Buyer of commercial sex: Anyone who gives something in exchange for sex.

Coercion: the use of threat or actual harm or psychological abuse or duress exercised over a person to cause the person to believe that failure to do an act in result in serious harm to the person or family member.

Consideration: in a contract each party to the agreement must part with something to advantage of the other. This can be anything of value including forbearance to sue.

Consumer: a person who buys commercial sex from women.

Contractual: agreement that is intended by the parties to the agreement to be legally binding.

Debt bondage: under the 1956 Supplementary Convention on the Abolition of Slavery, debt bondage is defined as "the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined"

Demand: refers to the willingness of men in the destination countries like Italy to buy commercial sex from migrant women. Demand approach o tackling trafficking for prostitution focuses on discouraging the request for commercial sexual services.

Domestic servitude: forced labour involving domestic work in private houses.

Exploiter: any person or group of persons including organisations who takes advantage of migrants women in any way.

Exploitation: refers to the coercion, maltreatment of women moved into prostitution in order to take advantage of the women for the benefit of another.

External trafficking: refers to the trafficking of persons from Nigeria to other countries.

Facilitator: Any person or entity involved in the recruitment and movement of women from the country of origin to the destination country.

Feminism: is used in the narrow sense in this thesis to refer to women's issues or concerns as distinct from issues that affects all human beings.

Harm: physical, emotional, psychological, financial and other sufferings or abuse that women moved into prostitution are subjected to in order to get them to do the will of the recruiter.

Human smuggling: "shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;" article 3 Smuggling Protocol.

Human Trafficking: "shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;" article 3 Trafficking Protocol

Irregular migration: any form of human movement between two countries outside the legally acceptable methods.

Internal trafficking: refers to the trafficking of Nigerians within Nigeria.

International Human Trafficking Law: refers to a compendium of treaties adopted at the international level to address human trafficking.

Juju oath: refers to oath taking that involves ritual sacrifices and the invocation of spirits.

Labour trafficking: refers to the trafficking of a person for labour exploitation.

Madam: An older woman who manages a brothel. The madam has usually been prostituted in her earlier years; she may be a pimp herself, perhaps a career criminal.

Prostitution: refers to the business of exchanging heterosexual services for money, goods and services.

Sex industry: refers to the sector where sexual services are provided as a form of business.

Sex exploitation: is the forceful or coercive use of women to provide heterosexual services to enrich the exploiter.

Survival Sex: where a person is forced to sell heterosexual services for basic necessities of life.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (also referred to as the “Trafficking Protocol”): The Protocol was adopted by the UN in 2000 and is an international legal agreement attached to the UN Convention Against Transnational Organized Crime. The protocol sets out an agreed definition of trafficking in persons. The purpose of the Protocol is to facilitate convergence in national cooperation in investigating and prosecuting trafficking in persons and protect and assist the victims.

Woman/women: is used to refer to any female of 18 years and above.

APPENDIX A

Topic and Question Guide

1. Preliminary Issues
 - a. Overview of human trafficking from Nigeria
 - b. Causes of human trafficking from Nigeria
 - c. Responses to human trafficking and human smuggling in Nigeria
 - d. Who are the actors?
 - e. Gender and the movement of women for prostitution
2. Recruitment procedure
 - a. How do recruiters get the women they recruit before moving them into prostitution?
 - b. Do the women agree to be moved into Italy or other countries?
 - c. Are they aware that they are being recruited for prostitution or other forms of employment?
 - d. Are the women able/free to change their minds at any time even in Italy?
 - e. Are there women who pay other people to help them to migrate to Italy or other countries to work in prostitution?
 - f. Are all the Nigerian women moved into prostitution subjected to the Juju oath?
 - g. Why is the *juju* oath so important in the recruitment process?
 - h. Are the women's expectation met in Italy?
 - i. What do you think keep the women in Italy if their expectations are not met?
3. Who are the persons involved in the movement of Nigerian women for prostitution?
 - a. Who makes the travel arrangement?
 - b. Are parents/families/friends involved?
 - c. If yes, what is the extent of such involvement?

4. Overview of State responses to the movement of Nigerian women for prostitution - Nigeria and Italy
 - a. NAPTIP law/Italian law
 - b. What is the approach of the anti-trafficking law on the issue of consent and prostitution?
 - c. How would you interpret consent in the context of Nigerian women moved into Italy for prostitution?
5. What are the possible effects of the movement and the working condition in Italy on the women?
 - a. Health
 - b. psychological etc

APPENDIX B

REGISTRY RESEARCH UNIT

ETHICS REVIEW FEEDBACK FORM

(Review feedback should be completed within 10 working days)

Name of applicant: Olufunke Florentina Aluko-Daniels **Faculty/School/Department:**
Business Environment and Society

Research project title: The Role of Agency in the Prostitution of Women from Nigeria to Italy

Comments by the reviewer

<p>1. Evaluation of the ethics of the proposal: This ethics proposal addresses all issues identified for consideration by the reviewer in the initial application. As such, the application meets necessary requirements to grant ethical approval.</p>
<p>2. Evaluation of the participant information sheet and consent form:</p> <p>There is some repetition of point in section 'Do I have to take part' of your participant information sheet, which you should address. However, your information sheet and consent form includes the information needed to grant ethical approval.</p>
<p>3. Recommendation: (Please indicate as appropriate and advise on any conditions. If there any conditions, the applicant will be required to resubmit his/her application and this will be sent to the same reviewer).</p> <p><input type="checkbox"/> Approved - no conditions attached</p> <p><input type="checkbox"/> Approved with minor conditions (no need to resubmit)</p> <p><input type="checkbox"/> Conditional upon the following – please use additional sheets if necessary (please re-submit application)</p> <p><input type="checkbox"/> Rejected for the following reason(s) – please use other side if necessary</p> <p><input type="checkbox"/> Further advice/notes - please use other side if necessary</p>

Name of reviewer: Geraldine Brown

Signature:

Date: 20th May 2011

APPENDIX C

Participants' Information Sheet

Study title

Locating the Place of Consent in the Movement of Nigerian Women for Prostitution in Italy

What is the purpose of the research?

Whether trafficked persons consent to the trafficking process and their subsequent exploitation has been the subject debate amongst academics and practitioners in the field. This research aims to contribute to the body of knowledge by gathering evidence on locating the place of consent in the movement of Nigerian women for prostitution. The research will particularly focus on the movement of Nigerian women moved into Italy for prostitution in order to produce a more up to date picture of the phenomenon.

Why have I been chosen?

I need your knowledge and understanding of human trafficking and especially the movement of women for prostitution in order to gather evidence and data for my research. You will be asked to contribute to the study either by consenting to a semi-structured interview or by consenting to take part in a facilitated focus group where possible.

Do I have to take part?

No. Participation is entirely voluntary. If you change your mind about taking part in this research you can withdraw at any point by contacting me on the address and email stated below and there is no penalty for deciding that you no longer wish to participate in the study.

What do I have to do?

Your only commitment is to be available on an agreed date and time for a semi-structured interview or to participate in a focus group discussion.

What are the risks associated with this project?

The meetings will be informal but if you are not conversant with focus groups you may feel uncomfortable entering into discussion with people you do not know personally. The facilitator will be able to discuss any concerns you may have in private, you may opt for a semi-structured individual interview or withdraw from the project.

What are the benefits of taking part?

It will be an opportunity to share your experiences. It will also provide you a forum to share your ideas and experiences concerning human trafficking and to hear the views of others on the subject. Light refreshments will be provided at the meetings.

Data protection & confidentiality

Only I will have access to the raw data. All the consent forms will be stored in a separate secure location from the raw data itself. I will only retain the raw data until the final mark for my thesis is given. They will then be destroyed. You will be identified by your participation code. If stored in a computer file, your data will only be associated with a code and access to the file will be password protected.

What if things go wrong?

If there is a change or I need to cancel any meeting or sessions I will contact you as soon as possible using the method indicated by you in the consent form. If things go wrong and you need to make formal complaints, the complaints should be directed to:

Professor I.M Marshall

Pro-Vice Chancellor (Research)

Coventry University

Priory Street

Coventry CV1 5FB

What will happen with the results of the study?

The results of the research will be written up and presented as part of my final PhD thesis. If the results are novel, it may be presented at academic conferences and/or written up for publication in peer reviewed academic journals.

Who has reviewed this study?

The Ethics Committee of Faculty of Business, Environment and Society has reviewed and approved this study.

Who is organising and funding this research?

The research is organised by Olufunke Aluko-Daniels, who is a doctoral candidate (stage 2) at the Coventry University International Studies and Social Sciences. This project is not externally funded.

Further information/contact details:

Olufunke Aluko-Daniels

Department of International Studies and Social Sciences

Faculty of Business, Environment and Society

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Coventry CV1 5FB

United Kingdom

Email: [REDACTED]

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APPENDIX D

Olufunke Aluko-Daniels

Department International Studies and Social Science

Faculty of Business, Environment and Society

Coventry University

Priory Street

Coventry CV1 5FB

United Kingdom

Email: [REDACTED]

Mobile: [REDACTED]

Participant Reference Code:

Consent Statement

Frequently Asked Questions about the project are addressed on a separate Participation Information Sheet.

I have read and understood the attached Participant Information Sheet and by signing below I consent to participate in this study.

I give my consent to allow audio recording of my participation in the research and for these records to be reviewed by persons involved in this research.

I understand that all information will be kept confidential and reported in an anonymous way, and that recordings will be destroyed when the final mark of the thesis is given.

I understand that I have the right to withdraw from the study without giving a reason at any time during the study itself, and that my withdrawal will not be penalised.

I understand that I also have the right to change my mind about participating in the study for two weeks after the study has been concluded.

Signed:

Print Name:

Witnessed by:

Print Name:

Researcher's Signature: